

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

May 23-24, 2009

SEATTLE, WA

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**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:40 a.m.

Saturday, May 23, 2009

Emerald II Room

The Red Lion on Fifth Avenue

Seattle, WA

COMMITTEE MEMBERS PRESENT:

Mr. Colin Kippen, Chair

Ms. Sonya Atalay

Mr. Alan Goodman

Mr. Eric Hemenway

Mr. Dan Monroe

TABLE OF CONTENTS

CALL TO ORDER – DAN MONROE, CHAIR PRO TEM	6
INVOCATION – ERIC HEMENWAY	6
WELCOME	6
COMMENTS BY DFO, NEW MEMBER WELCOME	7
NOMINATIONS FOR REVIEW COMMITTEE CHAIR	12
SELECTION OF THE SUBCOMMITTEE TO WRITE THE 2008 REPORT TO CONGRESS	13
REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF GREAT SAND DUNES NATIONAL PARK AND PRESERVE, CO	15
PRESENTATION	16
ART HUTCHINSON	16
ARDEN KUCATE	17
TERRY KNIGHT (STATEMENT READ BY A. KUCATE)	17
ARDEN KUCATE	19
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	20
REVIEW COMMITTEE MOTION	24
REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF PECOS NATIONAL HISTORICAL PARK, NM	26
PRESENTATION	26
KATHY BILLINGS	26
CHRISTOPHER TOYA	28
JOSE LA CRUZ TOYA	29
STANLEY LORETTO	29
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	30
REVIEW COMMITTEE MOTION	35
BREAK	39
REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF HOVENWEEP NATIONAL MONUMENT, UT	40
PRESENTATION	40
CORALEE HAYS	40
TIMOTHY BEGAY	42

THERESA PASQUAL	43
TERRY MORGART	45
ARDEN KUCATE	46
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	48
REVIEW COMMITTEE MOTION	50
OVERVIEW OF THE NAGPRA GRANTS RETROSPECTIVE	55
PRESENTATION BY SANGITA CHARI AND LAUREN TRICE	55
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	64
REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE NATIVE AMERICAN HUMAN REMAINS IN THE UNIVERSITY OF NEBRASKA STATE MUSEUM, NE	94
PRESENTATION	94
PRISCILLA GREW	94
WINNAY WEMIGWASE	97
WILLIAM JOHNSON	99
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	100
REVIEW COMMITTEE MOTION	102
NOMINATIONS FOR AT-LARGE MEMBER	105
LUNCH	112
NOMINATIONS FOR AT-LARGE MEMBER - CONT'D	112
DISCUSSION OF APPOINTMENT OF VICE-CHAIR	118
REVIEW COMMITTEE MOTION	120
DISCUSSION OF CHANGES TO THE REVIEW COMMITTEE CHARTER	120
REVIEW COMMITTEE MOTION	127
REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF CENTRAL MICHIGAN UNIVERSITY, MUSEUM OF CULTURAL AND NATURAL HISTORY, MI	131
PRESENTATION	131
WILLIAM PRETZER	131
WILLIAM JOHNSON	134
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	140
REVIEW COMMITTEE MOTION	141
COMMENTS FROM THE REVIEW COMMITTEE FOR THE DRAFTERS OF A PROPOSED RULE REGARDING THE RULE TO BE CODIFIED AT 43 C.F.R. 10.7	143

**NATIONAL NAGPRA PROGRAM MANAGER'S MID-YEAR REPORT ON THE
IMPLEMENTATION OF NAGPRA (FY2009) 164**

PRESENTATION - SHERRY HUTT	164
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	181
INTRODUCTION OF JEANETTE SOARES, GOVERNMENT ACCOUNTABILITY OFFICE	207
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	207

**NATIONAL NAGPRA PROGRAM LAW ENFORCEMENT INVESTIGATOR'S
REPORT ON NAGPRA CIVIL ENFORCEMENT 210**

PRESENTATION - BOB PALMER	210
REVIEW COMMITTEE QUESTIONS AND DISCUSSION	217

BREAK 220**DATES AND LOCATION OF THE SPRING 2010 REVIEW COMMITTEE
MEETING 220****CLOSING BLESSING 226****MEETING RECESS 227**

1 **CALL TO ORDER – DAN MONROE, CHAIR PRO TEM**

2 DAN MONROE: Good morning, everyone. I'm Dan
3 Monroe, Chair pro tem. I want to thank all of you
4 for joining us for this NAGPRA meeting. We very,
5 very much appreciate your participation. And I'd
6 like to begin by asking Eric Hemenway if he would do
7 the invocation and traditional welcome for us.
8 Eric.

9 **INVOCATION – ERIC HEMENWAY**

10 ERIC HEMENWAY: (Native American language.)

11 For this meeting, I ask that the spirits here
12 guide us in what we are doing and that I'm very
13 happy to be here and have an opportunity to work
14 with everybody. And I asked that everybody speak
15 with a clear mind and a clear heart that we can
16 resolve these issues. *Miigwetch*. Thank you.

17 **WELCOME**

18 DAN MONROE: Thank you. We appreciate all of
19 our local representatives and the NAGPRA office for
20 arranging this very, very typical Seattle weather
21 for us. Seattle is spectacular when it's like this,
22 and we again are delighted to have all of you with
23 us.

24 David, you have some comments to open regarding
25 the meeting, I gather, and other topics.

1 **COMMENTS BY DFO, NEW MEMBER WELCOME**

2 DAVID TARLER: Yes. Thank you, Mr. Chairman.
3 First, if I would, I will take a roll call, and then
4 I will have some comments.

5 Colin Kippen?

6 COLIN KIPPEN: Present.

7 DAVID TARLER: Colin Kippen is present.

8 Eric Hemenway?

9 ERIC HEMENWAY: Here.

10 DAVID TARLER: Eric Hemenway is present.

11 Dan Monroe?

12 DAN MONROE: Yes.

13 DAVID TARLER: Dan Monroe is present.

14 Alan Goodman?

15 ALAN GOODMAN: Present.

16 DAVID TARLER: Alan Goodman is present.

17 Sonya Atalay?

18 SONYA ATALAY: Present.

19 DAVID TARLER: Sonya Atalay is present.

20 Donna Augustine? Donna Augustine is not
21 present.

22 SHERRY HUTT: Mr. DFO, Donna Augustine called in
23 and she is ill and her son is very ill, and she
24 regrets that she is unable to be with us.

25 DAVID TARLER: And we wish them both good

1 health.

2 I have called six names. As you are aware, the
3 Native American Graves Protection and Repatriation
4 Review Committee is composed of seven members. The
5 term of Rosita Worl, who also served as Chair of the
6 Review Committee, ended on March the 2nd, 2009. We
7 are expecting an appointment soon by the Secretary
8 of the Interior. Until then, we have six members on
9 the Review Committee. Rosita Worl, as I said,
10 served as Chair. Before her term expired she
11 appointed Dan Monroe as the Chairman pro tem.

12 At this time, I would like to welcome new
13 Review Committee members. On May the 20th, 2008,
14 the terms of three members of the Review Committee
15 expired. Two of the members, Dan Monroe and Vincas
16 Steponaitis, had been appointed from nominations
17 submitted by national scientific and museum
18 organizations, and the third member, Willie Jones,
19 had been appointed from nominations submitted by
20 Indian tribes and Native Hawaiian organizations, and
21 Mr. Jones is a traditional religious leader.

22 Eight individuals were nominated by national
23 scientific and museum organizations for two
24 positions on the committee. And after careful
25 consideration of their qualifications, then

1 Secretary Kempthorne appointed Sonya Atalay to a
2 four-year term and reappointed Dan Monroe to a two-
3 year term.

4 Sonya Atalay is an Assistant Professor of
5 Anthropology at Indiana University in Bloomington
6 and is the current chair of the Society for American
7 Archaeology's Committee on Native American Relations
8 and the former chair of its Indigenous Populations
9 Interest Group. In her academic writing and
10 speaking, her fieldwork in Turkey, and her outside
11 consultation work in the Great Lakes Region of the
12 United States, Dr. Atalay has developed
13 methodologies in archaeology and heritage management
14 designed to foster collaboration between scientists
15 and descendant and local communities. Her hands-on
16 experience with NAGPRA compliance includes working
17 since 2002 with the Saginaw Chippewa Indian Tribe of
18 Michigan and the Michigan Anishnaabek Cultural
19 Preservation and Repatriation Alliance on NAGPRA-
20 Related Research.

21 Dan Monroe is a current member of the Review
22 Committee and also serves on the - has served on the
23 Review Committee from 1992 to 1996. He is the
24 Executive Director and Chief Executive Officer of
25 the Peabody Essex Museum in Salem, Massachusetts,

1 and former president of the American Association of
2 Museums and also chairs the Association of Art
3 Museum Directors Art Issues Committee. During the
4 passage of NAGPRA, he played a central role in
5 negotiating compromise language that was included in
6 the law. And in his service to the Review Committee
7 he has facilitated the resolution of a variety of
8 disputes, assisted the Secretary in promulgating
9 regulations, and has provided valuable advice on
10 complex issues.

11 Five individuals were nominated by Indian
12 tribes and traditional religious leaders for one
13 position on the committee to be filled by a
14 traditional religious leader. After careful
15 consideration of their qualifications, then
16 Secretary Kempthorne appointed Eric Paul Hemenway to
17 this position.

18 Eric Hemenway performs traditional ceremonies
19 for his tribe, the Little Traverse Bay Bands of
20 Odawa Indians, and since 2006 he has been working
21 with NAGPRA compliance on a daily basis as the
22 Research Repatriation Assistant for the Archives,
23 Records and Cultural Preservation Department of his
24 tribe. Eric Hemenway has been relied upon by other
25 tribes seeking his assistance with requests to the

1 Review Committee for the disposition of culturally
2 unidentifiable Native American human remains and has
3 personally appeared before the Review Committee. He
4 has demonstrated an understanding of the Review
5 Committee's deliberative process including the
6 evidence required to be presented by parties seeking
7 a Review Committee recommendation.

8 Welcome to new members and to your
9 reappointment, Mr. Chairman.

10 DAN MONROE: Thank you, David.

11 Before we move to the next item on the agenda,
12 the election of a chair, I'd like to on behalf of
13 the committee extend and recognize the extraordinary
14 leadership and service Rosita Worl provided as
15 Chairman of the NAGPRA Review Committee over a
16 period of several years. Rosita is, as all of you
17 know who have attended these meetings previously, an
18 extraordinary and exceptional scholar. She is very,
19 very active in the affairs of Sealaska Corporation,
20 she heads the nonprofit arm of that, and in a
21 variety of other Tlingit and Haida activities
22 throughout Alaska. She's a leader in the state and
23 also at the national level. Having served for a
24 number of years - on this committee, I can say and
25 I'm sure that I speak for all of the committee

1 members that Rosita's term as Chair was marked by
2 incredible judiciousness, fairness, openness, and
3 really exceptional leadership. I'd like to enter
4 into the record our thanks for all of the work that
5 she has done.

6 **NOMINATIONS FOR REVIEW COMMITTEE CHAIR**

7 DAN MONROE: And with that I'll open the floor
8 for committee members to nominate a new chair.

9 SONYA ATALAY: I would like to nominate Colin
10 Kippen as Chair.

11 DAN MONROE: Okay. Colin. Any other
12 nominations? Is the committee prepared to act?
13 Very good. All in favor, say aye.

14 SONYA ATALAY: Aye.

15 ALAN GOODMAN: Aye.

16 DAN MONROE: Aye.

17 ERIC HEMENWAY: Aye.

18 DAN MONROE: Opposed?

19 All yours, Colin.

20 COLIN KIPPEN: I guess that's the start, my
21 nametag just fell. I'd like to say *aloha* to all of
22 you and to thank the committee. I am the seventh
23 member of the committee. Three of the - the way
24 that - the way my position is elected is that three
25 of the scientific members and three of the

1 traditional religious leaders, all six of the
2 members need to nominate a seventh person, and I was
3 nominated and I am that seventh person. So without
4 - and I hail from Hawaii. My background is that I
5 worked on the Senate Committee on Indian Affairs. I
6 was a tribal judge here in this part of the country.
7 And I've spent most of my life as an advocate for
8 Native rights. That's my background. But I've also
9 worked in government and in other positions.

10 I think this is an important position and I
11 hope to do the best that I can to make this a fair
12 process, to make it transparent, to make it
13 understandable to everybody who comes before us. So
14 without further discussion I'd like to just move
15 forward with our agenda.

16 DAVID TARLER: Mr. Chairman, the next item on
17 the agenda is the selection of the subcommittee to
18 write the 2008 Report to Congress that is required
19 by NAGPRA and this report will be submitted to the
20 full Review Committee at the next meeting on October
21 30th and 31st.

22 **SELECTION OF THE SUBCOMMITTEE TO WRITE THE 2008**
23 **REPORT TO CONGRESS**

24 COLIN KIPPEN: All right. We report annually to
25 the Congress about the progress of this committee

1 and so I will need support from my committee
2 members. I'll have to say to everyone present,
3 especially the new committee members that in the
4 four years that I've been here I've always been one
5 of the people who has been tasked with writing that
6 report. So I'm about to set a subcommittee that
7 doesn't include me on it. And with that caveat, I
8 would ask if there are one or two volunteers on the
9 committee who would like to assist in doing this.

10 I will tell you if you are - if you have some
11 fears about the difficulty of this report it really
12 is about summarizing what we've done. There is a
13 formula to how we report and the way we report it
14 and it's simply taking our information and rolling
15 it over. And the information that is reported to us
16 comes from staff in a way that it is readily able to
17 be included in a format that can be reported.

18 So do I have any nominations or voluntary
19 actions to be part of this committee? I need two
20 people to do this. I'm waiting.

21 That being the case then what I'll do is I'll
22 nominate two and I will also assist you in doing
23 this work. Alan, would you be willing to assist in
24 that regard?

25 ALAN GOODMAN: Yes, I would, sir.

1 COLIN KIPPEN: And Sonya, would you be willing
2 to assist as well?

3 SONYA ATALAY: Yes, I will.

4 COLIN KIPPEN: All right. And I will assist
5 both of you. I can tell you this is a piece of work
6 we need to get done and it can be readily performed.
7 Thank you.

8 So with that having been said, I would like the
9 record to reflect that we have a subcommittee
10 established and that as we proceed through this
11 meeting we will be collecting information to include
12 in that report.

13 Our next issue is a request for a
14 recommendation regarding an agreement for the
15 disposition of culturally unidentifiable human
16 remains in the possession of Great Sand Dunes
17 National Park and Preserve in Colorado.

18 Mr. Tarler.

19 DAVID TARLER: Yes, and I will call Art
20 Hutchinson, Fred Bunch, Terry Knight, and Arden
21 Kucate.

22 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
23 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**
24 **NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF**
25 **GREAT SAND DUNES NATIONAL PARK AND PRESERVE, CO**

1 **PRESENTATION**

2 **ART HUTCHINSON**

3 ART HUTCHINSON: Good morning. My name is Art
4 Hutchinson, and I am the Superintendent of Great
5 Sand Dunes National Park, which is located in South-
6 central Colorado. As the manager of this unit of
7 the National Park Service and under the - an agency
8 in the Department of the Interior, I have determined
9 after extensive consultation with all potentially
10 affiliated tribes that the unaffiliated remains in
11 the custody of this National Park be repatriated to
12 the Ute Mountain Ute Tribe of the Ute Mountain
13 Reservation in Colorado, New Mexico and Utah.

14 Great Sand Dunes is currently in the custody of
15 three individuals under the authority of NAGPRA that
16 were found in the 1960s by a San Luis Valley,
17 Colorado resident. Those remains were likely found
18 either in or near the boundaries of Great Sand Dunes
19 National Park.

20 As Superintendent of the park, I respectfully
21 request a recommendation from the Review Committee
22 that the NPS moves forward with the proposed
23 disposition of these sets of remains as described in
24 your briefing materials. If the Review Committee
25 recommends proceeding and the Secretary of the

1 Interior concurs, disposition is expected to take
2 place in 2009 or early 2010.

3 Mr. Terry Knight of the Ute Mountain Ute Tribe
4 was unable to attend this review meeting due to
5 ceremonial commitments at the reservation at Towaoc,
6 Colorado. However, Mr. Arden Kucate of the Pueblo
7 of Zuni has agreed to read Mr. Knight's written
8 statements and will also add supporting statements
9 based on his participation in the various
10 consultation meetings held in Alamosa County,
11 Colorado, and at San Juan Pueblo in New Mexico.
12 Thank you.

13 **ARDEN KUCATE**

14 ARDEN KUCATE: Thank you. Good morning,
15 Chairman and members of the Review Committee. My
16 name is Arden Kucate, and I come from the Village of
17 Zuni Pueblo in New Mexico. And as Art indicated, I
18 will go ahead and read off a statement that was
19 provided to us by Mr. Terry Knight. Unfortunately
20 he was unable to be here to fulfill his cultural
21 commitments as indicated, but this is his statement
22 before the NAGPRA Review Committee.

23 **TERRY KNIGHT (STATEMENT READ BY A. KUCATE)**

24 ARDEN KUCATE: "In April of 2008, the consulting
25 tribes for the San Luis Valley came together in an

1 agreement as to the proposed disposition for these
2 remains. It is always the consulting tribe's main
3 objective to see the remains returned to Mother
4 Earth.

5 "The Region of Colorado where the San Luis is
6 located was the aboriginal lands for many migrating
7 tribes following the seasons for game and nature's
8 harvest to survive. A leader in this migration was
9 the Blue Sky People, the Utes. They were the
10 protectors of the mountains that are known as the
11 Rocky Mountains and the Continental Divide. They
12 shared this valley with many tribes and all have
13 cultural, aboriginal, historical ties to this vast
14 land.

15 "These tribes and pueblos after consultation
16 have decided to ask for repatriation to the Ute
17 Mountain Ute Tribe to care for and return these
18 remains to Mother Earth after their long absence
19 from where they came from. All the consulting
20 tribes will assist with this ceremony in their own
21 cultural way.

22 "As in the past, the Ute Mountain Ute Tribe is
23 and will be committed to the repatriation and
24 reinterment of these culturally unidentified human
25 remains found within Colorado and the Southwest."

1 So that's the statement as provided by Terry
2 Knight on behalf of the Ute Mountain Tribe.

3 **ARDEN KUCATE**

4 ARDEN KUCATE: And so I guess in conclusion with
5 that I'm very honored to have the opportunity to
6 come before each and every one of you, and I
7 certainly congratulate the new, incoming membership.
8 And you know, we did have, you know, a good length
9 of consultations before we all came to a consensus
10 to have this presented before the Review Committee.
11 And so I'm asking for your careful review and
12 consideration to our request and we're always very
13 honored and have the fortune of making sure that we
14 have good government-to-government consultations
15 among the tribes that when it comes to NAGPRA and
16 human reinterment issues and so forth.

17 So therefore I'm asking for the Review
18 Committee, your support and favorable consideration
19 of the proposed disposition of said remains and
20 likewise, you know, I'm willing to ask for the
21 Review Committee to allow this to move forward with
22 the proposed disposition and hopefully that we can
23 fulfill this reinterment as indicated by Art in late
24 '09 or early 2010. So with that, that's my request.
25 Thank you.

1 COLIN KIPPEN: I'd like to thank you for your
2 testimony. Just for the record could you please
3 restate your name?

4 ARDEN KUCATE: For the record, my name is Arden
5 Kucate from the Pueblo of Zuni.

6 COLIN KIPPEN: Thank you. Are there any more
7 witnesses?

8 ART HUTCHINSON: No, there are not.

9 COLIN KIPPEN: Mr. Tarler, is there any more
10 information to come before the committee?

11 DAVID TARLER: No, the information that you have
12 been provided is the information that you can use to
13 deliberate and make your recommendation.

14 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

15 COLIN KIPPEN: All right. For purposes of the
16 new members on the committee as well as for those
17 who are in the audience what normally now occurs is
18 that the committee members will ask questions and
19 then we move into a - and then we will - let me take
20 a timeout here. Is there - are we doing
21 deliberation today or are we announcing this
22 tomorrow?

23 DAVID TARLER: You may deliberate now and make -

24 COLIN KIPPEN: Okay.

25 DAVID TARLER: - and come to a decision if you

1 are prepared.

2 COLIN KIPPEN: All right. Then in that case, we
3 will now - the committee - the floor is now open for
4 the committee to ask any clarifying questions. And
5 then if it is the desire of this committee we will
6 move forward to deliberate on this matter. The
7 floor is now open.

8 Mr. Goodman.

9 ALAN GOODMAN: Thank you for an excellent
10 presentation of documents that I think was really
11 very clearly done. Just a couple questions, and
12 they really are just for further clarification.

13 Under 13, which is the sources of information
14 in the determination, I'm interested in what isn't
15 included and, you know, maybe particularly to focus
16 on biological information and whether or not that
17 wasn't included as a source because it was looked at
18 and there just was not any additional information as
19 to affiliation or determination of Native Americans
20 that could be garnered from those material or
21 whether or not it was not included as - and I do see
22 that you reference a report by McGinnis, just
23 clarification please.

24 CHRISTINE LANDRUM: My name is Christine
25 Landrum. I work for the National Park Service in

1 their regional office in Denver in the Office of
2 Indian Affairs and American Culture. And thank you,
3 Mr. Goodman, for that question.

4 We have available, if any members of the Review
5 Committee are interested, the actual human remains
6 analysis information. Because the material, it was
7 largely inconclusive, we were advised that basically
8 if we could say it in a narrative way there was kind
9 of no need to include it; that it would in turn make
10 your - I think your binders inches bigger,
11 especially for one of our later park requests for
12 Pecos. But I did bring copies of the materials that
13 we had originally submitted but removed from our
14 packages, and I would be more than happy to provide
15 those - that information to you if that's something
16 the Review Committee would like.

17 COLIN KIPPEN: Are there any further questions?

18 ALAN GOODMAN: Can I ask a follow-up? I guess
19 if you could report then whether or not that
20 information was inconclusive, you know, perhaps
21 because of the fragmentary nature of the remains or
22 whether or not there was additional evidence that
23 these are Native American remains but just didn't
24 make it into part of that item number 13 in that
25 excellent summary sheet.

1 CHRISTINE LANDRUM: Sure. In short, the human
2 remains are fragmentary. However, the two forensic
3 anthropologists who examined the remains determined
4 that due to dental wear largely that the remains
5 were Native American and likely Prehistoric, but the
6 age determination was not definitive either. Is
7 that what you were looking for?

8 ALAN GOODMAN: Thank you. Excellent.

9 COLIN KIPPEN: Are there any further questions?
10 Are there any comments from the committee? Is the
11 committee ready for a disposition of this matter?

12 ALAN GOODMAN: I do have one more quick
13 question, if I can.

14 COLIN KIPPEN: Mr. Goodman.

15 ALAN GOODMAN: And again this is also for
16 clarification and can you just say a little bit more
17 about - you said "disposition is expected to take
18 place in late 2009 or early 2010." Can you say a
19 little bit more about what you mean by disposition?

20 CHRISTINE LANDRUM: Truly repatriation and
21 reinterment that will take place in consultation
22 with the tribes at a location that is identified in
23 consultation with the tribes and under a process
24 that we develop collaboratively with not only the
25 Ute Mountain Ute as the repatriating tribe but with

1 the other consulted tribes as interested.

2 ALAN GOODMAN: Thank you.

3 **REVIEW COMMITTEE MOTION**

4 DAN MONROE: Mr. Chair?

5 COLIN KIPPEN: Yes.

6 DAN MONROE: I move approval of the request of
7 the Great Sand Dunes National Park and Preserve to
8 repatriate three sets of human remains to the Ute
9 Mountain Ute Tribe.

10 ALAN GOODMAN: I second.

11 COLIN KIPPEN: There has been a motion and a
12 second. Is there any discussion of the motion?
13 There being no discussion of the motion is there a
14 call for the question?

15 DAN MONROE: Call.

16 COLIN KIPPEN: The question has been called.
17 Would the committee please - all those in favor say
18 aye.

19 SONYA ATALAY: Aye.

20 ALAN GOODMAN: Aye.

21 ERIC HEMENWAY: Aye.

22 COLIN KIPPEN: Aye.

23 DAN MONROE: Aye.

24 COLIN KIPPEN: All those opposed say nay. The
25 matter has been approved. Thank you.

1 ART HUTCHINSON: Thank you.

2 DAN MONROE: Thank you.

3 TERRY KNIGHT: Thank you.

4 ALAN GOODMAN: Thank you.

5 ERIC HEMENWAY: Thank you.

6 COLIN KIPPEN: Mr. Tarler, which item would you
7 like us to consider next?

8 DAVID TARLER: Mr. Chair, the next item is going
9 to be a request for a recommendation regarding an
10 agreement for the disposition of culturally
11 unidentifiable Native American human remains in the
12 possession of Pecos National Historical Park in New
13 Mexico.

14 COLIN KIPPEN: All right. If you were to look
15 on our agenda, this matter is scheduled for 10:30.
16 We are ahead of time at the present time. Is this -
17 do you have a witness? Do we have a witness
18 available?

19 DAVID TARLER: Yes, we do.

20 COLIN KIPPEN: Would the parties involved who
21 are going to be addressing the committee please step
22 forward to the microphone?

23 DAVID TARLER: And they are Kathy Billings,
24 Heather Young, and Chris Toya.

25 COLIN KIPPEN: I want to welcome all of you for

1 the time and the effort that you've put into this
2 matter and for coming to address us today.

3 Mr. Tarler, is there an order that you would
4 like them to proceed?

5 DAVID TARLER: No, it's discretionary with the -

6 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**

7 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**

8 **NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF**

9 **PECOS NATIONAL HISTORICAL PARK, NM**

10 **PRESENTATION**

11 **KATHY BILLINGS**

12 KATHY BILLINGS: Hi, I'm Kathy Billings. I'm
13 the Superintendent at Pecos National Historical
14 Park.

15 COLIN KIPPEN: Could you move the microphone a
16 bit closer so that everyone can hear what you're
17 saying.

18 KATHY BILLINGS: I'm Kathy Billings. I'm the
19 Superintendent at Pecos National Historical Park in
20 New Mexico, about 25 miles east of Santa Fe. Today
21 we at Pecos National Historical Park request a
22 recommendation from the Review Committee in support
23 of the proposed disposition of the remains of 153
24 individuals in the custody of the Pecos National
25 Historical Park under the authority of NAGPRA. As

1 the Superintendent I propose to repatriate the
2 remains of these individuals to the Pueblo of Jemez
3 in New Mexico. The justification for the proposed
4 disposition to the Pueblo of Jemez is supported by
5 the contextual information submitted to you, the
6 Review Committee, including the U.S. Congressional
7 Act of June 16th, 1936, which formally merged the
8 Jemez and Pecos Tribes into one nation, making the
9 Pueblo of Jemez the administrative and fiduciary
10 representatives of the Pueblo of Pecos. In
11 addition, the last immigration of the Pecos people
12 living at the pueblo was in 1838 when the Pecos
13 governor and the remaining inhabitants relocated to
14 the Pueblo of Jemez. And further the proposed
15 action is brought before you at the request of all
16 potentially affiliated tribes after extensive
17 consultation.

18 I respectfully request a recommendation from
19 the Review Committee that the National Park Service
20 move forward with the proposed disposition of these
21 153 sets of human remains described in the submitted
22 documentation to the Pueblo of Jemez. If the Review
23 Committee recommends proceeding and the Secretary of
24 Interior concurs, repatriation is expected to take
25 place in late 2009.

1 I would now like to introduce Chris Toya from
2 the Pueblo of Jemez.

3 **CHRISTOPHER TOYA**

4 CHRISTOPHER TOYA: Good morning. As Kathy has
5 stated, my name is Christopher Toya and I am from
6 the Pueblo of Jemez. I am the Traditional Cultural
7 Properties Project Manager there for the pueblo. I
8 do the cultural preservation. I have this morning
9 Jose La Cruz Toya. He is one of the traditional
10 religious society members from Pecos Pueblo. We
11 still hold that society group in Jemez Pueblo. He
12 is one of the members from the societies. It's
13 called the Pecos Eagle Watcher Society. Also with
14 me is Stanley Loretto who holds the Pecos Governor's
15 Cane that was given to Pecos Pueblo from the King of
16 Spain in 1620. We still hold that cane at Jemez and
17 it serves as the second Lieutenant Governor of Jemez
18 Pueblo.

19 And so we're here this morning to request the
20 remains of our Pecos ancestors. I myself am a
21 descendant of the Pecos people. My great-great-
22 grandfather came from Pecos Pueblo and I have a
23 direct lineage with Pecos Pueblo, as well as Cruz -
24 Jose here and Stanley Loretto. These are our
25 ancestors and we want our ancestors back in Pecos

1 Pueblo and be reburied. I feel that's the right
2 thing to do as a human being and out of respect for
3 our ancestors as well. Jose would like to say a few
4 words as well.

5 **JOSE LA CRUZ TOYA**

6 JOSE LA CRUZ TOYA: Good morning. My name is
7 Jose Toya. Like Chris said, I'd just like to take
8 my ancestors home to where they once lived and bury
9 them, put them at peace, and I don't want them
10 locked up here so I just want to take them home.
11 They're all from Pecos. I just want to take them
12 home. Thank you.

13 **STANLEY LORETTO**

14 STANLEY LORETTO: Good morning. I am Stan
15 Loretto. I was appointed Lieutenant Governor for
16 the Pueblo of Jemez, and I'm also here as Chris has
17 stated that we want to take our ancestors home to
18 Pecos to where they will rest in peace. Thank you.

19 JOSE LA CRUZ TOYA: Thank you.

20 COLIN KIPPEN: Are there any other witnesses who
21 would like to address the committee? No?

22 Thank you, Ms. Billings, Mr. Toya, Mr. Toya and
23 Mr. Loretto, for coming and for testifying before
24 the committee as well as for the information that
25 you have presented to us.

1 I would indicate to the committee that it's
2 under tab 5 of the information in our folders. And
3 at this time, just as we did in the last proceeding,
4 I would ask if there are any questions that
5 committee members have for the witnesses.
6 Mr. Goodman.

7 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

8 ALAN GOODMAN: I think it's probably in here
9 somewhere but could you explain the reason why there
10 are no associated funerary objects?

11 HEATHER YOUNG: Hi, my name is Heather Young and
12 I'm the museum curator at Pecos. The - most of
13 these remains were recovered in fragmentary nature
14 through erosion. They were not - and they were used
15 - recovered from eroding adobe walls, so there were
16 no associated funerary objects with the items.

17 COLIN KIPPEN: Are there any other comments or
18 questions from the committee?

19 ERIC HEMENWAY: Yes, I have one question.

20 COLIN KIPPEN: Mr. Hemenway.

21 ERIC HEMENWAY: I'd like to make a comment first
22 to commend everybody for coming together for your
23 consultation meetings. It's a learning experience,
24 and I didn't know there were so many pueblos out in
25 your area. I know we - in my tribe and the tribes

1 in Michigan we meet quarterly to try to hash out
2 repatriation issues and whatnot, so it's really - I
3 can see the value in everybody coming to the table
4 face-to-face and, you know, talking these things
5 out. So I like to see that group effort with
6 tribes.

7 I see from these sites that a lot of them carry
8 over into the Historic Period and maybe Chris could
9 just tell me a little bit what is the likelihood
10 that a non-Native occupant would be in these areas
11 living during these time periods because it goes
12 into the late 1600s and 1700s, so what would be the
13 chance that, say, a non-Native person would be
14 dwelling in this area?

15 CHRIS TOYA: The likelihood and the chance of
16 non-Native people dwelling in the area is very high.
17 I'll tell you the truth. Since Pecos Pueblo was
18 right on the eastern edge of the Pueblo world it was
19 right on the western edge of the plains country and
20 Pecos Pueblo was the trading place for the plains
21 people as well as pueblo people. They call it the
22 "Gateway to the Plains," Pecos Pueblo. And the
23 Comanche, some of the Plains Indians, the Apaches
24 would come there and trade with Pecos people. As
25 the stories will go with our Elders that, you know,

1 the Pecos people, we stay in the confines - there's
2 a large wall extending all the way around the pueblo
3 for protection, you know. We would stay behind
4 these walls, but when trading did occur and there
5 was troops, you know, the Plains people would come
6 down on the east side where there's a little prairie
7 there and set up their teepees and whatnot, and our
8 people will go out to greet them and trade our
9 pottery, our corn, our squash and so forth, what the
10 pueblo people, what my people were making at the
11 time and they would trade with the Plains people
12 bringing buffalo hide and so forth, meet and trading
13 would occur.

14 And so the likelihood of other people being -
15 living there is high too, you know, but back in the
16 late '90s when a large repatriation occurred and I
17 think it was the largest at that time with NAGPRA,
18 Jemez Pueblo repatriated somewhere in the likelihood
19 of 5,000 human remains, as well as funerary objects,
20 from the Peabody Museum in Boston. And at that time
21 when our Elders testified they realized that some of
22 them may not at that time be all Pecos, but they
23 were taken from Pecos Pueblo. And so we accepted
24 all of them and we - and our Elders at the time said
25 we will accept them no matter what just to put them

1 to rest because that's where they were taken from
2 because Pecos Pueblo had a church and the
3 missionaries were living there and so they were
4 bringing in people to bury there, but we accepted
5 all of them and it was the right thing to do.

6 ERIC HEMENWAY: Thank you.

7 CHRIS TOYA: Sure.

8 COLIN KIPPEN: Are there any further questions
9 or comments? Mr. Goodman.

10 ALAN GOODMAN: Yeah, I don't know, Mr. Hemenway,
11 if this is also part of your question about the
12 likelihood of Spanish missionaries and Spanish
13 populations in the area at - during this Historic
14 period, but I'll put that to you as well.

15 So the question is whether or not, I guess, by
16 quote, the term "non-Native," non-Native to the area
17 but also Spanish populations in the area at this
18 period. And I know that's true but I guess the
19 question refers specifically to these individuals.

20 CHRIS TOYA: When the Spanish - when the Mexican
21 government took over back in the 1820s, I believe,
22 from when the Spanish occupation was - had collapsed
23 and the Mexican government came in there was a lot
24 of people squatting and, you know, it happens out
25 there in the pueblo world, there was the Pecos land

1 grant, around 17,000 acres or so. But when the
2 Mexican government or the Mexicans came in the King
3 of Spain had no more authority of the area. There
4 was no garrison of soldiers to protect the lands and
5 so forth. And our people, the Pecos people, once a
6 very strong nation because of the epidemics and
7 warfare and so forth had dwindled down to maybe a
8 few hundred or less. And so they really had no
9 choice. They didn't even want to leave. It was
10 their home. It was the place where their
11 grandfathers and their grandmothers were buried,
12 their children, but they had no choice, you know.
13 If the Pecos people were to continue in this life in
14 the world, you know, they had to - they had to leave
15 and join their kinsmen in Jemez Pueblo because we
16 were the same people. Back in our history, in our
17 oral history, there was a time when the - you know,
18 the Pecos clan and the Jemez people were together,
19 but due to maybe the management of the natural
20 resources and so forth, the Pecos clan left the area
21 up in the Four Corners area from our people and they
22 separated, but we were still kin. We spoke the same
23 language, and we had the same practices and so
24 forth.

25 And so - and we knew that, and when it was time

1 for the Pecos people to join the Jemez, they had a
2 hard time. So my uncle, my great-uncle tells me his
3 father used to tell him that they really had a hard
4 time leaving Pecos because it was their home but for
5 the future generations they had to leave and join
6 Jemez people. The likelihood of a non-Native being
7 in the collection might be there but from the
8 evidence that has been gathered, you know, the best
9 evidence that we can muster, they're Pecos people.

10 HEATHER YOUNG: May I add, more likely than not
11 these are Native American people. The Spanish
12 settlements were not begun in the area until the
13 late 1700s, and they did establish churches in their
14 communities also.

15 COLIN KIPPEN: I'd like to ask the woman who
16 just spoke, could you please again identify
17 yourself?

18 HEATHER YOUNG: Heather Young, museum curator at
19 Pecos.

20 COLIN KIPPEN: All right. Are there any further
21 comments or questions?

22 **REVIEW COMMITTEE MOTION**

23 DAN MONROE: Mr. Chairman, move approval of
24 Pecos National Historical Park to repatriate 153
25 sets of human remains to the Jemez Pueblo.

1 COLIN KIPPEN: Is there a second to the motion?

2 ALAN GOODMAN: Second.

3 COLIN KIPPEN: The motion - it has been moved
4 and seconded. Is there any discussion? Is the
5 committee ripe for calling the question?

6 DAN MONROE: Question.

7 ALAN GOODMAN: Call the question.

8 COLIN KIPPEN: The question has been called.
9 All those in favor say aye.

10 SONYA ATALAY: Aye.

11 ALAN GOODMAN: Aye.

12 ERIC HEMENWAY: Aye.

13 COLIN KIPPEN: Aye.

14 DAN MONROE: Aye.

15 COLIN KIPPEN: All those opposed say nay. The
16 matter is approved. I'd like to thank all of you
17 for your work.

18 I would also like to indicate for those of you
19 who are in the audience the procedure that we're
20 going through may seem a bit truncated but I must
21 advise you that - and I'm holding it up now for you
22 to see - this is the information that has been
23 provided to us as part of this process. Everything
24 that we have - we have substantial information that
25 has been provided to us by Ms. Billings. It

1 reflects the work and the - with all of the tribes
2 involved, with all of the entities involved. It is
3 substantial. And the questions that the committee
4 has asked are simply just those questions that flow
5 from the materials and the very abbreviated
6 testimony before us. So I want you to understand
7 that this is a very deliberative process. The
8 committee members have had this information in
9 advance, and it is this information that we are
10 using to reach this decision.

11 I just have one question for Ms. Billings and
12 the other members. We have a format that we've
13 established, the committee has recently established,
14 to help to manage the flow of information from the
15 community and from the tribes and from the museums
16 and scientific organizations, Federal agencies,
17 etcetera, to give us the information. We have a
18 format. I'd like to just ask you very quickly, what
19 is your impression of that template that we have
20 adopted?

21 KATHY BILLINGS: I thought the template worked
22 very well and asked important questions that we
23 needed to address. It was very - it was very easy
24 to follow that and helped us in our consultations
25 also, knowing the information that you wanted to

1 review so that we could come together with the
2 information in great advance of this meeting so that
3 we came prepared and were ready if you had further
4 more detailed questions.

5 COLIN KIPPEN: Thank you. Are there any further
6 comments from the committee?

7 ALAN GOODMAN: I guess this is for, perhaps for
8 the DFO, but what I might find useful is a list of
9 appendices or a continuous numbering of each section
10 so - you know, for easy referral back to. So there
11 are page numbers, for instance, on the report itself
12 but not any of the attached documents. So just for
13 ability to refer back to the attached documents,
14 either label them as appendices or just continuously
15 number them.

16 COLIN KIPPEN: Your comment and suggestion is
17 noted. I'd like to thank again all of you for your
18 help and the work that you (portion of comment
19 inaudible) template that we will see several times
20 today. It was used in the last matter that we
21 disposed of, and I think that it has been helpful to
22 - for the community, for the museums, for the
23 tribes, for everyone to understand what it is and
24 how it is this process should work. So thank you
25 again.

1 DAN MONROE: Thank you.

2 STANLEY LORETTO: I would like to say thank you
3 in my language. (Native American language.) Thank
4 you.

5 COLIN KIPPEN: Thank you.

6 Mr. Tarler.

7 DAVID TARLER: Mr. Chair, at this time I would
8 like to request a five-minute recess so that we can
9 make an arrangement for one of the presenters for
10 the agenda item scheduled for 10 o'clock to be
11 available telephonically. She was supposed to be
12 here in person but was prevented from being here.

13 COLIN KIPPEN: I will - we will recess for
14 approximately five minutes. We'll be back at -
15 let's make it ten minutes. We'll be back at 9:40.

16 DAVID TARLER: Thank you, Mr. Chair.

17 **BREAK**

18 COLIN KIPPEN: I'd like to call the meeting back
19 to order. Could we please return to order?

20 SHERRY HUTT: Go ahead, and we'll come.

21 COLIN KIPPEN: Thank you all for returning, and
22 Mr. Tarler, what matter should this committee next
23 consider?

24 DAVID TARLER: The matter that is on the agenda
25 scheduled for 10:00 a.m., a request for a

1 recommendation regarding an agreement for the
2 disposition of culturally unidentifiable Native
3 American human remains in the possession of
4 Hovenweep National Monument in Utah. And our
5 presenters are here.

6 COLIN KIPPEN: Before we begin, I'd like to
7 address the committee. This is under tab 3 in your
8 materials, in your meeting materials, tab number 3.

9 Mr. Tarler, would you please call the first
10 witness.

11 DAVID TARLER: Ms. Coralee Hays, who is the
12 Superintendent of Hovenweep National Monument in
13 Utah.

14 COLIN KIPPEN: Good morning, Ms. Hays.

15 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
16 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**
17 **NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF**
18 **HOVENWEEP NATIONAL MONUMENT, UT**

19 **PRESENTATION**

20 **CORALEE HAYS**

21 CORALEE HAYS: Good morning. My name is Coralee
22 Hays, and I'm the Superintendent of Hovenweep
23 National Monument and Natural Bridges National
24 Monument. Hovenweep is in Southeast Utah and
25 Southwestern Colorado, straddling that border in six

1 small units. On behalf of the National Park Service
2 and the Bureau of Indian Affairs, as the
3 Superintendent of Hovenweep National Monument and
4 representing the BIA NAGPRA Coordinator, we are
5 proposing to repatriate the remains of six
6 individuals and their associated funerary objects in
7 our custody to the Hopi Tribe of Arizona; the Pueblo
8 of Acoma, New Mexico; the Pueblo of Zia, New Mexico;
9 and the Zuni Tribe of the Zuni Reservation, New
10 Mexico. The justification for the proposed
11 disposition in this matter is supported by
12 information gathered through government-to-
13 government tribal consultation, in addition to the
14 archaeological contexts, associated archaeological
15 material, and other evidence cited in the requesting
16 document. This proposed action is brought before
17 the Review Committee at the unanimous request of all
18 potentially affiliated tribes after extensive
19 consultation. The consulting tribes have asked the
20 National Park Service to serve as the lead agency
21 for the purposes of the NAGPRA process and their
22 representatives are with us today to voice their
23 support for this proposal.

24 I'd like to introduce these representatives to
25 the Review Committee: Theresa Pasqual, who is

1 Director of Historic Preservation, Acoma Pueblo; Tim
2 Begay, Cultural Specialist and Traditional Cultural
3 Program Director of the Navajo Nation; Terry
4 Morgart, Legal Researcher for the Hopi Tribe; and
5 Arden Kucate from Pueblo of Zuni. Also here - well,
6 she was supposed to be here to answer the technical
7 questions that you might have about this request is
8 Chris Goetze, our Cultural Resource Program Manager
9 for the Southeast Utah Group of the National Park
10 Service. But due to a canceled airline she's going
11 to join us by telephone if there's any questions
12 Christine Landrum or I are not able to answer.

13 COLIN KIPPEN: Thank you.

14 Mr. Tarler, is it necessary that Chris Goetze
15 be on the call now?

16 DAVID TARLER: She's not required.

17 COLIN KIPPEN: All right, so next witness
18 please.

19 **TIMOTHY BEGAY**

20 TIMOTHY BEGAY: Good morning, Chair and
21 committee and the general audience. Today we come
22 here united to fulfill natural laws that we were put
23 here on earth with while working through I guess
24 man-made laws that we have to work by today. We do
25 this in full understanding that we need to fill our

1 - the natural laws we were put here on earth with.
2 And at the end, no matter how you look at it, we
3 need to put these people back in the ground because
4 that's where they belong. We can't as tribes and
5 Federal agencies do anything about the past but we
6 have every power to do something about the future
7 and that's to get these people back into the ground,
8 not just the ones that are here that we're
9 discussing today but with - for all the human
10 remains that are in boxes in the museums and
11 institutions across the country. So we do that, you
12 know, with I guess the full understanding that this
13 needs to be done and we would appreciate that - your
14 decision. Thank you.

15 COLIN KIPPEN: Thank you. For purposes of the
16 record, that was Mr. Timothy Begay.

17 TIMOTHY BEGAY: The record is correct.

18 COLIN KIPPEN: Thank you.

19 Good morning.

20 **THERESA PASQUAL**

21 THERESA PASQUAL: Good morning, Chair and the
22 members of the committee, and good morning to all of
23 the NAGPRA Review attendees. My name is Theresa
24 Pasqual, and I'm the Director for the Pueblo of
25 Acoma Historic Preservation Office, and I am

1 representing the Pueblo of Acoma and the Elders who
2 were involved in particular with this particular
3 process and this particular decision that the
4 repatriating tribes in New Mexico came to.

5 This particular project in relation to
6 Hovenweep has been a long time in coming, and you
7 all who work extensively with NAGPRA understand the
8 urgency in relation to repatriating and reburying
9 our ancestors who have been left in institutions for
10 way too long. And so the Elders that we work with
11 there at Acoma really wanted to convey to you the
12 need for urgency and the need for a favorable
13 decision regarding this particular project because -
14 because there is a sense of not only urgency but a
15 sense of unfinished business so to speak in relation
16 to this particular project. A lot of our Elders
17 convey the sense or the message that they cannot
18 rest comfortably knowing that there are so many
19 remains that need to be repatriated.

20 This particular project has been a project in
21 the works with the National Park Service and we are
22 very pleased with the work that has gone forward.
23 We're pleased with Christine Landrum and the
24 National Park Service there at Hovenweep. They have
25 been very, very understanding to the complexities

1 regarding this particular project and the tribes who
2 are present here today with the representatives are,
3 I know, very pleased to collaborate on this
4 particular project.

5 So we respectfully ask a favorable decision
6 from the Review Committee from all of you so that we
7 can get this particular project done. So thank you,
8 and I know that all of you will take into
9 consideration the work that the repatriating tribes
10 have done in regards to this project. Thank you.

11 COLIN KIPPEN: Thank you, Ms. Pasqual.

12 **TERRY MORGART**

13 TERRY MORGART: Good morning, Chair and
14 committee. My name is Terry Morgart. I'm a legal
15 researcher for the Hopi Tribe. I brought my proof.
16 The Hopi Tribe looks forward to the reburial of
17 these culturally unidentified human remains and
18 funerary objects at Hovenweep National Monument. We
19 appreciate the Park Service's ability to rebury
20 human remains in the parks, as the Forest Service
21 also accommodates. But the BLM does not, so we wish
22 you to look into the continued prohibition of
23 collection reburial on BLM land of remains removed
24 from BLM land.

25 In any case, there is complete unanimity on the

1 lack of evidence to support a cultural affiliation
2 determination for these remains. We all agree that
3 they are culturally unidentifiable. As you can see
4 in your packets, there's virtually no information to
5 make a determination of affiliation on these
6 remains. And the unanimity that we have here is
7 demonstrated by the fact that Hopi and Navajo
8 completely agree on this proposal. I'd like to note
9 that we also agree on the Snowbowl case in
10 Flagstaff, the Mount Taylor case in New Mexico, and
11 most future interests that the tribes have in
12 common. We do have a compact with Navajo now and
13 the disputes of the past are being delegated to the
14 past.

15 COLIN KIPPEN: Thank you, Mr. Morgart.

16 Good morning, again.

17 **ARDEN KUCATE**

18 ARDEN KUCATE: Good morning, Chair and members
19 of the committee. I'm just here to also provide my
20 support as one of the lead repatriating tribes in
21 the Southwest, and I think through a lot of the
22 consultations, the collaboration and coordination,
23 you know, that is in place to make sure that there's
24 a consensus among the tribes when it comes to these
25 type of effort of approach. The shared unity in

1 what we do together is always something that is very
2 beneficial to our Elders, because our Elders are
3 very foreign to the process, the due diligence that
4 has to be fulfilled. And by coming to members such
5 as you all, you know, this is something that we have
6 to take back home and interpret back to our Elders
7 that I know a lot of the times, you know, it's their
8 patience that they just want to keep things moving
9 along, but we also have to let them know that
10 there's a process that needs to be utilized
11 accordingly.

12 So you know, this is basically why we're here
13 today, whether if it's for Pecos or any other Pueblo
14 or any other tribal, you know, reinterment issues
15 where when we stand together collectively and take a
16 look at everything that is required to make sure
17 that the documentation is all provided for your
18 review, I think it just really makes everyone, you
19 know, fulfill the issues of making sure that all the
20 remains are put back to the earth. So we certainly
21 ask for your favorable consideration and support as
22 well. (Native American language.)

23 COLIN KIPPEN: Thank you for your testimony.
24 Could you - I realize you testified in the previous
25 matter. Could you please just identify yourself

1 again for the record?

2 ARDEN KUCATE: Okay. For the record, my name is
3 Arden Kucate from Pueblo of Zuni.

4 COLIN KIPPEN: Thank you, and thank you for your
5 words. Are there any - is there any further
6 testimony from any of the witnesses? I sense that
7 there is none. Are there any comments or questions
8 from any of the NAGPRA Review Committee members?

9 Mr. Goodman.

10 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

11 ALAN GOODMAN: Just a quick question just to
12 bring the oral presentation and the written
13 presentation into concordance. In the written
14 request it mentions MNI of three individuals coupled
15 in a few different places, and I believe, Ms. Hayes,
16 you mentioned six. Is it -

17 CORALEE HAYES: Six plus.

18 ALAN GOODMAN: Six plus.

19 CHRISTINE LANDRUM: This is Christine Landrum.
20 If I could respond to that question, we have a total
21 of six MNI from three different sites, and so I
22 think that perhaps may be the answer.

23 ALAN GOODMAN: Okay.

24 COLIN KIPPEN: Mr. Goodman, any further
25 questions?

1 ALAN GOODMAN: No further questions from me.

2 COLIN KIPPEN: Are there any further questions
3 from any other committee members?

4 Mr. Hemenway.

5 ERIC HEMENWAY: First off, I'd like to thank
6 everybody for coming and if I'm not up here my job
7 is doing repatriation, so I know exactly what it
8 takes for you guys to all come here and meet with
9 other tribes, meet with the museum or park, and all
10 the accumulation of hard work just to be right here.
11 And so I recognize your efforts personally and I
12 know what it feels like to sit across and present
13 these and I want to say thank you, first of all, for
14 that.

15 It looks like these remains have changed hands
16 quite a few times over the course of the discovery,
17 and I just wanted to make sure that the legal
18 possession has always been with Hovenweep, and not
19 these other institutions, because it looks like San
20 Jose State University had these and they're now at
21 the Anasazi Heritage Center currently. So if I
22 could see a clarification on that issue.

23 CHRISTINE LANDRUM: I'd be happy to answer that.
24 All of these materials have been accessioned and
25 cataloged into National Park Service collections.

1 The reason that they're actually at the Anasazi
2 Heritage Center was at the last consultation meeting
3 that we had it was the request of the tribes to
4 bring them together at that facility because it is a
5 nice collection storage facility, really kind of
6 helping us to move those individuals toward
7 repatriation. And so they were moved there at the
8 request of the tribes, although the BLM has no role
9 in this process right now, they participated in the
10 consultation with the tribes and again even though
11 they're currently being cared for pending
12 repatriation at that BLM Anasazi Heritage Center
13 facility they are in the possession of the National
14 Park Service.

15 ERIC HEMENWAY: Thank you.

16 CHRISTINE LANDRUM: You're welcome.

17 COLIN KIPPEN: Are there further comments or
18 questions by the committee members?

19 If not, is there a motion?

20 **REVIEW COMMITTEE MOTION**

21 DAN MONROE: Move approval of the request.

22 COLIN KIPPEN: Is there a second?

23 ERIC HEMENWAY: I second.

24 COLIN KIPPEN: There has been a motion and a
25 second. Is there further discussion?

1 There is no further discussion. Is it - is
2 there a call for the question?

3 DAN MONROE: Call.

4 COLIN KIPPEN: Question has been called. All
5 those in favor say aye.

6 SONYA ATALAY: Aye.

7 ALAN GOODMAN: Aye.

8 ERIC HEMENWAY: Aye.

9 COLIN KIPPEN: Aye.

10 DAN MONROE: Aye.

11 COLIN KIPPEN: All those opposed say nay. The
12 matter is approved. Thank you very much for coming.

13 I would - before you leave, I would like to ask
14 you as well, since we have implemented a new
15 process, the committee staff has assisted us in
16 implementing a new process and I would like your
17 comments about that process, in particular the
18 template which the committee has drafted for your
19 use. Are there -

20 CHRISTINE LANDRUM: I've been nominated to
21 answer your question. You know, I think as someone
22 who helped to prepare our three requests today,
23 although certainly our region of the Park Service
24 has come to the Review Committee before, I think the
25 piece that I appreciated is the consistency in the

1 layout. I think all of the information, for
2 example, for some of our other requests for the
3 Review Committee, the content was there in the past
4 but it was perhaps organized differently. So I can
5 only imagine that both on our side when we're
6 preparing the materials and on your side when you're
7 looking for answers to specific questions, excuse
8 me, I think that it - really the consistency is
9 really nice.

10 I agree that it would be advisable in the
11 future to kind of organize some of the materials
12 into appendices, because I think it's confusing kind
13 of flipping back and forth. But I do think it
14 really helped us to make sure that we hit the points
15 that you in turn are looking for. So along those
16 lines too in light of some of the questions today
17 for our three requests, you know, we may tweak our
18 own - any future requests in the future to make sure
19 that we're better answering up front without having,
20 you know, for you guys to have to kind of wade
21 through it, some of the things that were brought up
22 today. But in short I think they're great.

23 COLIN KIPPEN: I'd like to thank you for your
24 comments. I'd like to also indicate for the people
25 in the audience or others who might read this record

1 that what is presented here verbally is the tip of
2 the iceberg and it is a - we received at least a
3 half inch of materials that were organized in
4 accordance with the template that the committee has
5 assisted us with in creating for the use in these
6 kinds of - for your use in these kinds of cases. So
7 I think it has improved and streamlined the process.
8 I want to thank you all. I want to commend you for
9 the way you've worked together to accomplish a
10 common goal and I think it really is an example for
11 a lot of us to take note of. So again, thank you
12 for your work.

13 DAN MONROE: Thank you.

14 COLIN KIPPEN: Mr. Tarler?

15 DAVID TARLER: Mr. Chairman, the next item on
16 the agenda is entitled an "Overview of the NAGPRA
17 Grants Retrospective," and I will let Sherry Hutt,
18 the Manager of the National NAGPRA Program introduce
19 Sangita Chari, who is the Grants Coordinator in the
20 National NAGPRA Program, and Lauren Trice, who is an
21 intern in the program.

22 SHERRY HUTT: I said you guys can handle it, but
23 they'd like me to be here if you have any additional
24 questions.

25 Members of the panel, I'm so pleased to

1 introduce Sangita Chari who is our Grants
2 Coordinator, and I have to tell you that this year
3 with her hard work since she joined us just a little
4 over a year ago, the grants applications were up 100
5 percent for FY09 over FY08. And I attribute that to
6 her handholding, personal contact, and work with the
7 grants. And in addition under her stewardship of
8 the grants program, not only is she concerned about
9 people applying for grants and building capacity in
10 tribes and working with small museums as well, but
11 her big concern has been that she gives service
12 after the award to make sure that after grants are
13 awarded that they resolve successfully and that she
14 check in and develop processes to check in with all
15 the grant awardees periodically over the course of
16 that grant so if there are any problems she can
17 resolve it before it comes to a crisis.

18 With her today is Lauren Trice who many of you
19 will have met if you've been down to be videoed, and
20 Lauren has come to us from the University of Mary
21 Washington's Historic Preservation Program. She has
22 been an intern with our program working on the
23 grants, and she has been so successful in so many of
24 the things that she has done that we've asked her to
25 hold over for the summer to keep her working on the

1 video project with Maggie Spivey.

2 And the project that they're now going to tell
3 you about I think is one I hope that the Review
4 Committee will take a great deal of interest in
5 because we are looking at grants from the first time
6 that Congress gave the money. What have you
7 obtained from the funds? What have communities
8 obtained by receiving the funds? And so without
9 anything more, I'll turn it over to Sangita and
10 Lauren.

11 **OVERVIEW OF THE NAGPRA GRANTS RETROSPECTIVE**

12 **PRESENTATION BY SANGITA CHARI AND LAUREN TRICE**

13 SANGITA CHARI: Good morning. Before I get into
14 the full grants retrospective, I do want to take a
15 minute and just speak a little bit to what Sherry
16 was talking about that I've been working on this
17 year. The first time I met you all was in De Pere
18 last May, and I discussed how I wanted to take this
19 chance now that we're about 16 years into the grants
20 program to do an assessment of what was and what
21 wasn't working, to look at our outreach strategies
22 to tribes and museums and figure out how we can
23 better get the word out about NAGPRA and the grants
24 program, to figure out how we could better
25 collaborate with other agencies and institutions who

1 are also working on similar issues to help us spread
2 the word to strengthen grants administration, and I
3 had specific requests around increasing the amount
4 that we offer for grants, as well as to look at
5 capacity particularly with those tribes and Native
6 Hawaiian organizations that are really at the
7 beginning phases.

8 I keep a five-year portfolio, and I have worked
9 a lot on trying to get all of those grantees into
10 compliance. A lot of people are doing exactly what
11 they need to be doing, and what I found is there are
12 some real challenges out there in terms of staff
13 turnover, training, and infrastructure. A lot of
14 times there's scheduling issues with museums, which
15 has held funds back. And what we now do is keep on
16 top of everybody for these five years, I call them,
17 I stay in touch with them, they work with us to keep
18 them in compliance. And now you can find all
19 information grantees could possibly need on our
20 website, so if they need an extension, they need a
21 budget modification, all of that information is
22 accessible and available. So we have a much higher
23 compliance rate.

24 The other thing that I'm doing is I have redone
25 the final - the final project form, so that we are

1 now gathering quantitative data: how many
2 repatriations have occurred thanks to your grant,
3 how many trainings have you attended, who are you
4 collaborating with, what are your new partners. So
5 that hopefully I can now get a much better sense of
6 the impact that grants are making and get a better
7 sense of then how to target our outreach and
8 training strategies.

9 We did a survey - I had a prior intern who did
10 a survey of museums, both museums that have applied
11 and are consistently applying for grants, those who
12 might have applied and then didn't get a grant and
13 never came back to us to figure out what their
14 issues were, what's compelling them to write a grant
15 and work - you know, use that process to further
16 their NAGPRA goals and why they're not. And I got
17 some good information about the difference between
18 those who are into the - I guess what I would call
19 the spirit of the law versus feeling that they're
20 compliant with the letter of the law. That's a big
21 term that comes up. It has a lot to do with staff
22 and it has an enormous amount, it seems to me, to do
23 with the leadership of museums and where they see
24 NAGPRA. And so I hope to kind of continue working
25 on that project. And we are - I'm going to do the

1 exact same thing with tribes and figure out why
2 people apply, don't apply, and how it works for
3 them.

4 And we are - I'm pushing along with training.
5 I see training as holistic. As I know you all know,
6 we did a training on Wednesday and Thursday that was
7 specifically on how to write and manage a successful
8 NAGPRA grant. But no grant is going to be
9 successful if you don't have all the tools you need
10 to manage a NAGPRA program, so we're also doing a
11 webinar in June on how to write a successful notice.
12 And I hope to be doing more trainings like that on
13 where I see that there are real capacity needs and
14 issues that perhaps the NAGPRA staff can address,
15 either ourselves or through more partnerships.

16 And then I want to take one more moment to talk
17 about the training that we did - just did on
18 Wednesday and Thursday. As you all know, we have a
19 partnership with the National Preservation
20 Institute. We had a really amazing opportunity
21 through a partnership Jere brought to the table with
22 the National Museum of the American Indian, and they
23 provided us with \$15,000 that we were able to offer
24 in travel grants to tribes to support the costs of
25 attending the training, which was really just an

1 amazing gift to us. It made a huge difference in
2 attendance. We had about 22 different tribes and
3 Native Hawaiian organizations attend. We had a
4 really excellent turnout from Hawaii and Alaska,
5 which I think is absolutely because of those grants.
6 And so I know Jill Norwood was here earlier but
7 she's the one who really instigated that and I
8 definitely thank her for that.

9 The training was extremely successful. Jan
10 Bernstein and I - who's also here, I know you all
11 know Jan - did it. I felt it was successful because
12 I learned an enormous amount from participants. We
13 had 100 percent attendance for both days, so it was
14 really great.

15 And with that I will now talk more about the
16 grants retrospective. Lauren and I have been
17 working on this, and what it is it's a 15-year
18 retrospective of our grants program. And not only
19 are we looking at statistics but it's our chance to
20 really get to the stories, which I think are the
21 best part of NAGPRA and I think we have not done
22 nearly as good a job as we need to in getting these
23 stories out. So we will show you most of these
24 statistics today, but there will also be a lot of
25 stories that Lauren will tell you a bit more about

1 as well.

2 So this covers the period of 1994 to 2008 and -
3 oh, we did have a handout. Over 31 million dollars
4 has been awarded. It's been a total of 592 grants.
5 These are both consultation and documentation, as
6 well as repatriation grants. The average
7 consultation grant has been around \$61,000. The
8 average repatriation grant has been at about \$9,800.

9 LAUREN TRICE: So what we're looking at in this
10 grants retrospective is to combine all of this data
11 that we've been able to compile with photographs of
12 projects, repatriation ceremonies, and stories from
13 grantees, a lot of which I've been looking back
14 through the grants files and finding really
15 interesting stories, beautiful photographs that
16 people have included in their grant applications,
17 and then contacting those applicants.

18 Then with the help of Mariah's database that
19 she has been putting together, we were able to pull
20 out a lot of really interesting graphs and charts
21 about the grants program so that we can understand
22 it better and really look to where it's going in the
23 future. So this is the total awarded applications.
24 You can see those are in the red. And then the blue
25 is the total applications for those specific years,

1 and you can see we have quite an incline here in
2 this past year now that we have Sangita.

3 SANGITA CHARI: And I just want to mention, you
4 can see the number of awarded applications is
5 obviously because the amount we have hasn't
6 particularly changed, so even though - other than a
7 little bit of a dip in 2005.

8 LAUREN TRICE: Then this is the progression of
9 grants and the different types of grants. So you
10 can see in the beginning there weren't very many
11 repatriation grants awarded. That has increased
12 over time. And what we can see in this grant - in
13 this graph is the number of consultation grants in
14 the beginning were really actually documentation
15 grants in the initial compliance with the law. And
16 what we predict will happen now is there will be
17 more consultation project grants, and so there will
18 be an increase in these blue bars.

19 Then we can divide the amount of money that's
20 been given to each state, so we pulled out
21 California here, and they've received the most
22 amount of money here. You can also see just the -
23 where things need to be improved, I guess.

24 SANGITA CHARI: But it's California, Alaska and
25 Oklahoma that are the highest, with Colorado and

1 Arizona pretty close, and Washington.

2 LAUREN TRICE: And then we can also pull out an
3 individual state and look at what it's done over
4 time. So we just pulled out California here to look
5 at that. And then this is the amount awarded by
6 year divided by tribe and museum application.

7 And then you can see here that we just took the
8 same information and put it into a pie chart so you
9 can see proportionally the amount of money awarded
10 to tribes versus museums. But then when you look at
11 the number of applications, on the following chart
12 you see that it's really proportional to the amount
13 of applications that they submit, the number that
14 are awarded.

15 SANGITA CHARI: I did want to say, the
16 interesting thing with museums is there was a large
17 number in the very, very early years, and then it
18 really declined. And so I'm working to figure out
19 how I can get more museums to apply.

20 LAUREN TRICE: And then we get to the more fun
21 part. These are the stories that I've been looking
22 at and talking to people about. One of the stories
23 we'll be including is the Museum of Northern Arizona
24 and their consultation project, which formed a
25 Native American advisory committee. One of the -

1 they used the consultation grant to form this
2 committee and to consult on their collection but
3 then the relationship that they built with these
4 four tribes, they were able to use that relationship
5 again when they were building their new collection
6 center.

7 And then also the - Sealaska had a tunic
8 repatriation and just how the tunic was in - was at
9 the Hearst Museum and then they took it to the Burke
10 Museum and decontaminated it and were able to bring
11 it back to Alaska.

12 SANGITA CHARI: And then repatriate it to the
13 actual clan that it belonged to.

14 LAUREN TRICE: So those are just a taste of some
15 of the stories that I've been working on.

16 SHERRY HUTT: I would just punctuate too on the
17 training that Sangita was talking about, not only
18 are there live grants trainings, the training that
19 was given this week prior to this meeting will be
20 repeated in September in Chicago. And in addition,
21 we have something new. Sangita is always testing
22 the technology envelop in terms of how to get out to
23 people and bring more information out and working
24 with Mariah Soriano, one of the newer members of our
25 NAGPRA team. But - and you've met Jaime Lavallee

1 who does notices. And Jaime and Sangita will be
2 giving a webinar - we put fliers out for everyone -
3 and that is how to write a successful notice and a
4 grant, and it will be June 30 between 2:00 and 4:00.
5 There's no charge for this. You don't have to leave
6 your office, just sit there with your computer and
7 participate in training.

8 And if this is successful, as I suspect it will
9 be under Sangita's hands, we intend to offer this in
10 numerous topics and take maximum advantage that we
11 possibly can over this medium of reaching out and
12 training. But this is - this is new for National
13 NAGPRA but it's new - they're tying in through a
14 process that Sangita discovered. They found some
15 resources in the Park Service and she's making the
16 most of them.

17 Questions for Sangita and Lauren?

18 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

19 DAN MONROE: Yes, could you comment further on
20 the research that you did with respect to museums
21 and explain in a bit more detail the comment you
22 made regarding the spirit and letter of the law?

23 SANGITA CHARI: There - what we found was that
24 there were museums when we spoke with them who said,
25 you know, we did our inventory, we sent it to the

1 tribes, we did our summary, we sent it, we're done.
2 And what typically that happens is that staff that
3 their expertise is in a different part of the
4 collection and this is not where their focus is.
5 And so for example, one museum said, you know, we -
6 ten years ago we consulted with this tribe, we did
7 all the work, we published the notice, and they
8 haven't come and got their stuff. So we're done,
9 they need to call us. So it's - and this is where
10 the Native American collection is small and it
11 wasn't - you know, it wasn't their focus, their
12 intellectual - their focus. So there is a lot of
13 that sense, you know, we did the inventory, we did
14 the summary, where are they sort of thing, and I
15 think it's just - it's a communication issue and
16 again it's a priority issue. If they're stretched,
17 it's not where the focus is.

18 DAN MONROE: How many museums did you contact?

19 SANGITA CHARI: I wish I brought my statistics.
20 What we did is we focused on - we did a - we sort of
21 looked at the overall museums in our - who had
22 applied for a grant. We took a smaller sample and
23 we did longer one to one-and-a-half-hour interviews,
24 and once we reached a point, I think around 10 to 12
25 museums, where we started to feel like we really got

1 a sense of what the themes were we went ahead -
2 that's about where we stopped. That's my training
3 and background, so it's sort of how I -

4 DAN MONROE: Thank you.

5 COLIN KIPPEN: Are there other questions?

6 SONYA ATALAY: Yeah, I'd also like to ask a
7 question, but first I'd like to thank you both for
8 this work. It's really interesting and I hope to
9 talk further with you about some of the specifics.
10 But in general I just wanted to ask about the
11 process, a little bit more about the process that
12 you followed in terms of gathering this data, if you
13 did - had specific questions that were kind of
14 standard that you asked to each community and if
15 those are available for us to have a look at?

16 SANGITA CHARI: Yes, there was a set of specific
17 questions that we asked.

18 SONYA ATALAY: And were those open-ended
19 interviews where you would then develop further
20 questions from those or were they just the standard
21 questions that you asked and gathered the
22 information?

23 SANGITA CHARI: No, a lot of it was done by my
24 intern and it was very much sort of an open-ended
25 interview. She had a set of questions. She went

1 through them. She would call back if she had more
2 questions. It was pretty much - I'd say each person
3 was about 90 minutes total.

4 SONYA ATALAY: Thank you. I'd like to see -
5 talk further with you about the data that you
6 gathered.

7 SANGITA CHARI: Sure.

8 DAN MONROE: I'd just add, I think the notion is
9 very valuable and I would encourage you to actually
10 extend the process. There are significant
11 differences among different kinds of museums with
12 respect to the manner in which they respond to
13 NAGPRA, and for example, in the natural history
14 museum community, history museum community, art
15 museum community, while they share many things in
16 common also are quite different in many respects.
17 And so I think that it would be valuable to extend
18 this work a bit and perhaps pursue it with a
19 somewhat different methodology, because it will be
20 very, very difficult to persuade especially museum
21 directors to sit down for an hour and a half to do
22 this, whereas I think some kind of questionnaire
23 that you've standardized would give the Department
24 and yourself a much better overview. It would be, I
25 think, much more likely that it would be filled out

1 and then you could follow up with questions. But it
2 would be very interesting I think to pursue this a
3 bit further, 10 to 12 museums is a good start but
4 not an overall sample, I don't think.

5 SHERRY HUTT: If I might be the Grinch here.

6 DAN MONROE: Yeah.

7 SHERRY HUTT: This - what you're saying is
8 wonderful. That would be - take us a little longer
9 to get there.

10 DAN MONROE: Sure.

11 SHERRY HUTT: Being the Federal government, when
12 we do survey we'd need OMB clearance to do that.

13 DAN MONROE: Sure.

14 SHERRY HUTT: So they were doing their work
15 within the constraints of -

16 DAN MONROE: Yeah, I think it's great.

17 SHERRY HUTT: But extending out that way would
18 be a good idea.

19 SANGITA CHARI: And one of the things I'm doing,
20 I should say, is I had a really great two - at least
21 two-hour meeting with AAM and have been talking with
22 them. And one of the things we'll be doing is
23 working directly with them on developing a training
24 for the next AAM conference and trying to figure out
25 ways to do outreach that way.

1 DAN MONROE: I'd just also encourage you to work
2 also with AAMD and perhaps with some of the other
3 organizations.

4 SANGITA CHARI: Okay.

5 DAN MONROE: AAM is good as an overview,
6 overarching museum organization for obvious reasons,
7 but there are actually quite a substantial number of
8 art museums that have Native American collections.
9 And I think that it would be beneficial to have
10 contact with them and perhaps some of the other more
11 specialized museum associations and organizations as
12 well.

13 (Inaudible comments.)

14 SANGITA CHARI: Definitely in folks that I
15 talked to, it's the small museum conference, the
16 regional museum conferences where I'm told
17 repeatedly that's where we need to be, that's where
18 we're going to get the word out to those and I
19 appreciate your suggestions, definitely.

20 DAN MONROE: There's AASLH. There's the Natural
21 History Museum Association, I believe, the
22 Association of Art Museum Directors, AAM.

23 SANGITA CHARI: Yes.

24 DAN MONROE: I know it makes your work more
25 complicated but actually -

1 SANGITA CHARI: If it gets it done.

2 DAN MONROE: - working with each of those will
3 pay off, I think. I applaud you for doing the work.
4 I think it's terrific.

5 SANGITA CHARI: Thank you.

6 COLIN KIPPEN: Questions? Mr. Goodman.

7 ALAN GOODMAN: Yes. Thank you as well. This is
8 very illuminating, and following mostly on a
9 question that Dan asked, when - and I know that this
10 is small samples - sample size, but when you
11 characterize a museum as operating under the letter
12 of the law do those - do you have any sense of
13 whether or not those tend to be where a
14 determination has been made of cultural affiliation
15 or, you know, situations in which they have - they
16 have said these are culturally undeterminable or
17 both?

18 SANGITA CHARI: I can't say that I specifically
19 looked at that, but I would say that, yes, my guess
20 is that they were able. In fact, yes, I would say
21 it's probably a mix. I don't think that they were
22 all (comment inaudible).

23 ALAN GOODMAN: Thank you.

24 COLIN KIPPEN: I have a question and a comment.
25 I'd like to as well thank you for what you've

1 accomplished here. I actually have a series of
2 questions. I'd just like to begin at the beginning
3 where you started your presentation. You noted that
4 there has been nearly a hundred percent increase in
5 the number of applications, and I think you gave us
6 a very broad sort of overview of what you were
7 doing, but could you better describe what your
8 strategy was to increase the number of people who
9 were applying for grants or the number of
10 institutions and tribes that were applying?

11 SANGITA CHARI: I think one strategy was just to
12 be a consistent staff person. I think that last
13 year part of the anomaly was that there was staff
14 turnover. I think - I tell - when I'm talking to
15 people on the phone, I tell them to go to the
16 website and apply, I told Eric to apply, and you
17 know, I think sometimes people just don't think to
18 apply. I did a - I had an intern who gave me every
19 website of every museum association based on state,
20 and so we did a mass mailing to all of them, which I
21 think definitely increased the number of museums
22 that applied. I talked to - I've spoken to I think
23 almost every grantee that was out of compliance and
24 bringing them in, I think, made them much more
25 confident to apply again. So I think getting them

1 into compliance and getting them back on track. A
2 lot of - I think at every single meeting that anyone
3 went to we just pushed the grants program. I mean,
4 anytime we had a chance we just pushed the grants
5 program.

6 I remind people a lot about the repatriation
7 grant. It's surprising to me how many people forget
8 that they can apply for funding to repatriate. But
9 a lot of it is really that direct talking to people
10 any time I was in a room and any time Sherry was in
11 a room or anyone on staff. Jaime also - Lavallee,
12 the notice coordinator, pushes the grants program a
13 lot.

14 COLIN KIPPEN: Did you have any impression as to
15 whether the amounts of the grants are adequate? We
16 have two - we have two categories of grants, the
17 consultation grant and the repatriation grants.

18 SANGITA CHARI: Yes, so we increased the amount
19 for consultation grants and what I found was it
20 didn't significantly alter the things that were in
21 an application grant. I think it - and not
22 everybody applied for the full amount.

23 COLIN KIPPEN: So what are the full amounts now?

24 SANGITA CHARI: The full amount is 90,000 for a
25 consultation documentation grant and 15,000 for a

1 repatriation grant. My sense is the repatriation
2 grant is generally all right. It seems to cover the
3 amount. I haven't ever had anyone tell me that they
4 felt that they were not able to do what they needed
5 to do, and I get a lot of folks who apply for
6 significantly less.

7 The consultation grant, like I said, because I
8 didn't see huge, like people adding on huge
9 projects, my guess is that it is better - it is more
10 adequately able to with the increase, the \$15,000
11 increase, allow them to do what they want - what
12 they were trying to do - they've been trying to do
13 on less money in the past.

14 COLIN KIPPEN: What's the relationship between
15 the first grant and the second grant in terms of
16 numbers? In other words, you have a consultation
17 grant which will arguably precede a repatriation
18 grant. So is there - did you find overlap?

19 SANGITA CHARI: Not a lot. I haven't actually
20 sat down and made that connection, which I will, but
21 honestly they seem to be very different. I have a
22 lot of folks who just apply for repatriation and
23 don't do the consultation grant and vice versa. So
24 I don't know that I'd necessarily - I mean, I think
25 there's some institutions that do do it that way but

1 I wouldn't make it a blanket statement.

2 COLIN KIPPEN: When you were discussing the
3 strategies, you said that there were - that your
4 work dealing with the grantees who may be out of
5 compliance was a substantial factor in future grant
6 applications. Is that what you were saying?

7 SANGITA CHARI: I think so.

8 COLIN KIPPEN: And why - and how does that - I'm
9 not sure I understand what you're saying.

10 SANGITA CHARI: You know, it's amazing the - I
11 mean, on the one hand I think that there's so -
12 there's a huge need for us to use technology more
13 effectively but on the other hand there's still
14 nothing like a phone call. And what happens is they
15 talk with me, we work together, they get things
16 sorted out, they feel like they're back on track,
17 and then we start talking about what they're going
18 to do next. And we - I have some who applied this
19 time, I have some who are set and feel like they're
20 ready to apply for next year. But I definitely feel
21 like just being back in touch with us and feeling
22 like, okay, I'm not penalized or in trouble because,
23 you know, staff left and the program languished for
24 six months and they feel like, oh, this is something
25 I can remediate and we can move on.

1 COLIN KIPPEN: What's the process by where you
2 handle the - who applies for these grants? I guess
3 what I'm trying to get an answer to is the question
4 of frequency of grant applications. Is there a need
5 to spread the grants to more individuals or do you
6 have seasoned grant applicants who repeat again and
7 again -

8 SANGITA CHARI: Yes.

9 COLIN KIPPEN: - versus a pool of people who
10 don't ever get grants? Is there any data that
11 you've collected that would help to paint a picture
12 for us as to the - I see the state data that you had
13 up there but in terms of frequent grants by certain
14 entities or tribes or museums. Is there -

15 SANGITA CHARI: We can get that and we can give
16 it to you. I mean, we have it - I didn't really
17 want to show it because it's - it takes more
18 explanation. There are some grantees where if you
19 look it's like, oh, they've gotten five or six
20 grants but what they did was they made an effective
21 use of repatriation grants and maybe only had one
22 consultation grant. There's others who, yeah, every
23 about two to three years they're able to get a
24 consultation grant. It's across the board but there
25 are definitely what I would call "seasoned," and

1 then there are those who I can see they've applied
2 once every few years and they don't quite get it.

3 There's also - I was surprised - a number of
4 them who applied and got like three or four
5 consultation grants in a row in the late '90s and
6 then have never applied again. So I guess, you
7 know, if it's a museum they did what they needed to
8 do or tried. They had somebody who was really
9 active and is probably not there or they've moved
10 onto other things. So yes, but it's not that
11 straightforward.

12 COLIN KIPPEN: I guess the reason I'm asking the
13 question is just because there's - what we hear is
14 that there - this is akin to an unfunded mandate but
15 for the grant program. In other words, a lot of
16 tribes and museums don't have the resources to be
17 able to do the important NAGPRA work, and so I'm
18 just trying to get a better handle on how we
19 allocate our funds. I can just tell you without
20 question, I think there's not enough money in the
21 pot. But assuming that they don't increase our pot,
22 how is it we're going to figure out how to better
23 use the resources we have to help more people do
24 this work? That's my question.

25 SHERRY HUTT: If I might comment on that,

1 Mr. Chairman. This year, for an example, the grants
2 projects describe over 5 million dollars' worth of
3 projects. They requested 4.2 million worth of
4 funds. So right off the top, you see that the
5 applicants are assuming that about a million dollars
6 of work is going to be borne by the tribe or the
7 museum. Of the 4.2 million of requests, we can only
8 fund to the maximum funds that we have, which is
9 slightly less than 2 million.

10 One of the biggest frustrations that we hear
11 from tribes particularly in terms of the unfunded
12 mandate, and that is the difference between the
13 NAGPRA grants program and the THPO, the Tribal
14 Historic Preservation Officer program. Now that -
15 I'm not saying the THPO Program is funded to all of
16 the extent that everyone would like it to be. But
17 what it does fund is the office to do the work of
18 the THPO. By contrast, a NAGPRA grant does not fund
19 the office of the NAGPRA coordinator for the tribe
20 or the museum, so there's some frustration sometimes
21 when people say, how can I do this work if my tribe
22 doesn't have the funds to hire the person to do the
23 work? And the funds in the NAGPRA program and the
24 NAGPRA grants are project oriented. So you will
25 find NAGPRA coordinators who are very successful at

1 writing very good grants that get funded on a
2 frequent basis and in doing so indirectly fund the
3 NAGPRA program for that tribe but they do so because
4 every year they've got this fabulous project, they
5 do the project, it ends in a notice, they do the
6 repatriation - you know, they do the repatriation
7 grant, and then they come back the next year with
8 another project that's also wonderful. And then
9 that way over the years, they've both made progress
10 for the tribe and funded their office. Not all
11 tribes are successful in projecting grants in that
12 way in projects, but they do seek funding for the
13 program. And the grants panel in response of
14 frustration, when they look at a grants project that
15 is simply to fund the office, that does not score
16 very high because it's not project oriented. So
17 there is where you see a sort of dichotomy in grants
18 programs. So tribes who are accustomed to getting
19 at least some funding, even if it's inadequate for a
20 THPO Program, cannot obtain through the grants in
21 NAGPRA that same corollary in office support. It's
22 project oriented.

23 COLIN KIPPEN: Right. What I really hear you
24 saying is that the strategy for capacity building is
25 to assist people in understanding how to formulate a

1 project plan because if you are able to formulate a
2 project plan then you can implement a series of
3 projects over years which may have the same result
4 as giving you the staff you need to do that work.

5 SHERRY HUTT: It's all correlated to project
6 success and incremental grants are looked favorably
7 upon by the grants panel. When they see something
8 that is a part of another project, they look forward
9 the next year to seeing the next incremental piece.
10 Whether that grant will score high enough to be
11 funded in the next year, of course, there's no
12 guarantee. But it is very incremental success
13 oriented on a project to notice to repatriation
14 basis.

15 COLIN KIPPEN: Sherry, I would like you to help
16 me understand this and to do some - express for me
17 some of those tables which help us to see what the
18 progression is with various entities that are
19 getting grants, because while on the one hand while
20 you're saying that that's a positive thing, from the
21 other perspective of those entities that have never
22 received grants they may look at that very
23 unfavorably saying, you know, we're simply not in
24 the loop; we don't get a grant in the beginning, we
25 don't get grants, and we don't feel a part of this

1 process to the extent that other entities may be
2 able to get successive grants.

3 SHERRY HUTT: Please don't take it as the idea
4 that someone who has previously received a grant is
5 going to be given preferential treatment. Each year
6 the grants panel takes all of the projects and ranks
7 them on the merits of the individual project.
8 They're always pleased when they see someone at the
9 end when they're done and Sangita tells them you've
10 put in scoring - in funding range tribes or museums
11 who've never had a grant before.

12 COLIN KIPPEN: Right.

13 SHERRY HUTT: So they track that as well. And
14 the other thing that Sangita looks at is capacity
15 building in unserved areas. So it's both sides.
16 It's doing as much as you can.

17 COLIN KIPPEN: I think that latter point you
18 made is what I'm really driving at here, trying to
19 get a better picture of the spread of these grants
20 and who are getting them - now, it could be that
21 certain tribes or entities are getting a lot of
22 grants because they have a lot of work to do, you
23 know, that - obviously that is clear. But at the
24 same time, you know, we hear it from the other side
25 which is that there's insufficient funds for

1 everyone to be able to participate in this unfunded
2 mandate of doing this work.

3 So I also would like to indicate for my panel
4 that's doing the report to Congress that this is a
5 fact that needs to always be picked up, which is the
6 amount of grant funds that are being requested in
7 comparison to the actual amount of funds that we are
8 able to distribute because there is a disparity, and
9 what's really clear is that I think the more work
10 that you do, the more people will be applying for
11 these grants, the less intimidating it will appear,
12 and the greater the number of people who will be
13 requesting funds. And hopefully we will be able to
14 fund more.

15 SANGITA CHARI: Right.

16 COLIN KIPPEN: But we have to be able to express
17 the demand to the Congress, and I think that's a -
18 those statistics are very helpful for us.

19 I just have one last question, and I apologize
20 to my committee. I just had a number of questions
21 about the grant program, even before you came, I
22 think it's really the way we address the unfunded
23 mandate aspects of NAGPRA. I'm - tell me a little
24 bit more about the training that's being offered and
25 our relationship with our vendor, which is - I

1 believe, is it National -

2 SANGITA CHARI: National Preservation Institute.

3 COLIN KIPPEN: And how that works.

4 SANGITA CHARI: The National Preservation
5 Institute basically handles all of the
6 organizational and administrative aspects. So we -
7 Sherry, actually could you answer that one? I
8 can't -

9 SHERRY HUTT: Yeah, the business and contracting
10 end of that, obviously, I have taken care of, but I
11 think one interesting bit of feedback that Sangita
12 obtained in the training that was done is that so
13 many of the people who took the training here in
14 Seattle accessed the training through the National
15 Preservation Institute website, not necessarily
16 through the NAGPRA website. So what we have is a
17 partner in this, the National Preservation
18 Institute, and they are nationally known for
19 delivering training to tribes and museums and
20 historic preservationists. They've been doing this
21 for a number of years successfully. And there
22 aren't that many vendors out there doing just that
23 sort of work.

24 And what came to light during the training is
25 so many of the participants have accessed the

1 training and signed up for the training because of
2 their history with NPI. So what NPI brought to the
3 table was access to people we weren't serving. Also
4 they brought Jill Norwood to the table and Jill
5 Norwood has become a real partner with the National
6 NAGPRA Program. She brought the National Museum of
7 the American Indian to partnership in this through
8 NPI. So we're partnership building through our
9 partner. And although we always say that NAGPRA
10 doesn't apply to the Smithsonian, we have so many
11 interests in common in serving tribes and dealing
12 with the museum property and the resolution of these
13 issues is a joint issue. So it was so wonderful to
14 have NMAI as a real partner, a positive, wonderful
15 partner in this project.

16 So the scholarships as you know, I reported to
17 you at the meeting - actually I've reported it a
18 couple of times because when we knew we were going
19 to have grant money left on the table in FY08, the
20 grants panel at that time in their frustration said
21 build capacity in applicants. And I said you're
22 leaving money on the table, are there more grants
23 you're going to fund? And they said, no, can you do
24 something with this money to raise capacity? And so
25 that meant that I needed to find - in the Federal

1 system you need to move quickly with money
2 especially at the end of the fiscal year. So this
3 came about, moving this money in July, right under
4 the nose of the closure where the money would have
5 gone back to the general fund.

6 So you look at who's out there doing this. You
7 review all the vender possibilities, and then you
8 choose the one that in the best interests of the
9 program and the people we serve you feel will give
10 you good management, good management of the funds,
11 and outreach, and leverage the capacity of your
12 program. The folks in the training yesterday, some
13 of them came up to me afterwards and they were
14 absolutely amazed because we have seven people in
15 the National NAGPRA Program and they do triple and
16 more duty, and so we're always looking to leverage
17 not just resources but people. And so with NPI,
18 they - with their website, they receive the
19 registrations, they set up the location, they set up
20 the local here in Seattle, they chose in conjunction
21 with Sangita and I the location in Chicago, and then
22 they do the logistical work and it just comes off
23 like clockwork.

24 And the funds are handed in a transparent and
25 efficient manner. I get reports on a periodic basis

1 that are clear, and - and we're getting that money
2 out. The - NPI has, which is I think to respond
3 fully to your question, has three cooperative
4 agreements. Actually it was one group of funds that
5 we had from the grants last year, and I may be
6 repeating, so stop me if I'm repeating because we
7 all discussed this at some length in the meeting in
8 San Diego in October. But a good chunk of those
9 funds, about a third of those funds, went to a
10 contractor that's developing the IT processes. In
11 taking over the NAGPRA Program I found that we
12 didn't have a true IT system. The reports that
13 Lauren and Sangita have generated and will generate
14 in response to your questions and the others in the
15 program that generate data for you and reports for
16 you over time can now rely on a system that didn't
17 exist six months ago.

18 And Mariah Soriano, our newest member, came to
19 us through the Southeast Region of the Park Service,
20 and she's our web and database person and she is
21 nothing short of amazing. I mean, she works with
22 these contractors like a taskmaster. She's elegant
23 in the way she works with them, but I think in terms
24 of the Federal system she must be - she's got to be
25 right up there at the top. You know, tell me what -

1 this is what you're going to do, tell me how you're
2 going to do it, the time periods, test what you've
3 done, and then move on task to task. And she is
4 developing within the grants system the ability to
5 interface between grants at Sangita's desk and the
6 applicants and the review and the person who
7 actually does the fund - who actually writes the
8 checks. The grants program money is handled, as are
9 many other Federal grants programs, through the Park
10 Service Grants Program and that desk now coordinates
11 with Sangita's desk and that enables them to - and
12 we'll coordinate more as we go forward, enables
13 Sangita to do the kinds of checking up to achieve
14 success that she wasn't able to do when she first
15 started with the program a year ago.

16 So that's where some of those funds have gone
17 into this building IT capacity so that when a tribe
18 calls and says, you know, I'm new with the tribe,
19 what museum sent us a summary, Mariah can give them
20 a run. When a Federal agency person calls and says
21 can I know how many individuals that you record as
22 being culturally affiliated but not in notices she
23 can do a data run. So we're - the capacity for data
24 runs - and this is going to end up in public access
25 so that Mariah is not always doing these data runs,

1 but they'll be in public access format that you can
2 do a lot of research from the data that we now hold.
3 So that's where some of those funds went.

4 Then the other funds were divided in three
5 ways, and one of them was the development of new
6 courses. The grants capacity building course is
7 one. We'll repeat that several times over -
8 periodically over the next couple of years until the
9 funds run out. And the other will be done for the
10 first time in Chicago, and that is determining
11 cultural affiliation. And that one, we're also
12 reaching out for new instructors and building
13 instructors involving more Native people and museum
14 people as instructors outside of the program. So
15 Sangita partnered in this course with Jan Bernstein
16 who you all know has presented many successful
17 grants. And also had - panelists from museums and
18 tribes were to be part of this and we hope to repeat
19 that. And I'm giving you a little bit of, since
20 we're on the topic here, stop me if you don't want
21 to hear this, but the determining cultural
22 affiliation that will be done for the first time in
23 Chicago, which can be repeated, we'll see how
24 popular that one is. The instructors for that will
25 be non-NAGPRA Program people. This is again in

1 response to comments from the Review Committee that
2 we need to get more folk in there, and I think it's
3 good that we do so that when people are talking
4 about that sensitive issue of cultural affiliation
5 it's not a statement of the NAGPRA Program but it's
6 a true training and working through it. And Mary
7 Ann Kenworthy, who is counsel of Indian Affairs who
8 was previously in DC is out in Portland. She'll be
9 teaching that, and she'll be teaching it with Gloria
10 Lomahaftewa, who is active with the Hopi Tribe in
11 matters of repatriation, formerly with the Heard and
12 the Museum of Northern Arizona. So we're reaching
13 out for talent and we're so pleased to have them
14 agreeing to - these are not easy courses to teach.
15 They're very intensive, intellectually intensive,
16 and they're willing to do that. And we hope to
17 develop some more courses.

18 So some of the funds are in course development,
19 then we took another group of funds and segregated
20 that for scholarship to pay for museum - small
21 museums as well as tribes will get scholarships to
22 the course in Chicago, and tribes have received
23 scholarships and will receive scholarships for the
24 grants training course. Then a third piece is the -
25 and those scholarships are augmented by the National

1 Museum of the American Indian funds, which - it's
2 just a wonderful partnership.

3 And then the last chunk of funds is the video
4 project because we can't physically get out and have
5 face-to-face trainings to the full extent that so
6 much training is needed. So the grants video,
7 ideally it's a 10- to 12-segment video. The first
8 segment of that you will see later this afternoon,
9 and it's the civil penalty segment. And I have to
10 say right off the top that there's no - please don't
11 think that we have prioritized civil penalties with
12 regard to museums above all else. We had again a
13 partnership with Loras College that Bob Palmer was
14 able to develop, and for a rather small amount of
15 funds turned over to the college and Bob directing
16 this video, we now have a civil penalties video
17 that's the first one of the segments that's
18 completed. The other ones are taking longer because
19 there's so many voices that will be included in them
20 and Maggie Spivey, who is down on the 3rd floor now
21 or up on the 5th floor now. We're on the 3rd floor.

22 LAUREN TRICE: Just across the hall on the 3rd
23 floor.

24 SHERRY HUTT: Is she across the hall? She has
25 been traveling to go to museums and tribes and we

1 get a local videographer so that she can obtain the
2 taping of these people - and Maggie and Lauren have
3 been working even throughout this committee meeting
4 in their room. They were able to get nine people on
5 tape yesterday and they will be working today and
6 tomorrow as well, and hopefully all of you will
7 agree to be part of the video - so that these
8 various segments will have many voices and many
9 ideas and many thoughts about NAGPRA and the
10 segments that you'll probably next see, I'm hoping
11 that as we screen today the civil penalties video
12 that when we meet in October we'll have more
13 segments. And those segments will be grants, one on
14 notices. We hope to follow shortly with one on
15 consultation in NAGPRA, the definitions and basics,
16 a process video on the process on the land and in
17 collections, and one that will take a great deal of
18 time that's really sort of item number one but I
19 think it would be very exciting is "How NAGPRA Came
20 to Be." And we hope to get everybody on film, on
21 tape, that had a hand in the developing of NAGPRA,
22 like some of you on this committee and others who -
23 really a history piece of how NAGPRA came to be so
24 that we never forget why we're here and what the
25 impetus was and all of the effort and support that

1 it took to build what we now process through on a
2 regular basis. So that's the video project. It's
3 incredibly exciting, and I look at all of those as
4 it was like a one-time opportunity to do these
5 things and certainly we've seen that because the
6 grants have doubled this year and those grants funds
7 are going all out to grant awards.

8 COLIN KIPPEN: How much money has been allocated
9 to the - to the NPI project, all of these projects
10 by us?

11 SHERRY HUTT: The projects altogether are - I
12 think it's 205,000, so I put aside a hundred for the
13 video, fifty-five for scholarships, and fifty for
14 new courses. And that's - we will work through
15 those funds over the next two, two-and-a-half years.

16 COLIN KIPPEN: When National Park Service
17 employees are involved, are - is that being done -
18 my assumption is that some of you may be involved in
19 some of these trainings. Is that not accurate?

20 SANGITA CHARI: I was a co-trainer -

21 COLIN KIPPEN: You're a co-trainer. And are you
22 - are you being paid by National Park Service or are
23 you being paid by NPI?

24 SHERRY HUTT: The trainings that are done by
25 people in the National NAGPRA Program, by Park

1 employees, are not - there's never an honorarium,
2 there's no compensation ever.

3 SANGITA CHARI: Oh, no.

4 COLIN KIPPEN: Okay. So it really is
5 logistics -

6 SHERRY HUTT: Yes.

7 COLIN KIPPEN: - registration, those sorts of
8 things, printing of materials.

9 SHERRY HUTT: Yes.

10 COLIN KIPPEN: That sort of thing.

11 SHERRY HUTT: Well, there might be some travel
12 costs to get - but the people who train, who give us
13 their time, we give them an honorarium but - and
14 that would come out of those funds, the people
15 that -

16 SANGITA CHARI: Yeah, in this one she helped
17 with all of the printing. She really - she was the
18 task person for it. She kept us - you know, she did
19 all of the printing. She coordinated all of the
20 registrants. She coordinated with Jan as a trainer
21 for it, all of her stuff. She made sure we had a
22 room. She had all of that set up. She had the food
23 for the training. If people had questions, it was
24 all directed to her. So our focus was simply on
25 content. And I had Lauren, and so we were able to

1 do some outreach because we knew with it being in
2 Seattle I wanted Alaska and Hawaii and California,
3 you know, the West Coast particularly targeted for
4 this one. And so Lauren was able to help with that,
5 but the rest of it was completely - it was Jere.
6 The other good thing about them that I just really
7 want to say is just how responsive they are. I
8 mean, you get calls back in a couple of hours, you
9 know. She's very, very responsive. So it was very
10 easy to work with them.

11 COLIN KIPPEN: Thank you. I don't have any
12 further questions. Thank you for clarifying all of
13 that information.

14 Members, do you have any more comments or
15 questions? None?

16 Thank you for your time.

17 Mr. Tarler?

18 ERIC HEMENWAY: Winnay Wemigwase, can you please
19 come forward?

20 DAVID TARLER: Mr. Chairman? Mr. Chairman?

21 COLIN KIPPEN: Yes.

22 DAVID TARLER: That we are running ahead of
23 schedule allows us to include some items that we had
24 placed on the schedule for tomorrow. And so at this
25 time I would direct your attention to the item that

1 is scheduled for tomorrow at 9:10 a.m., and that is
2 the request for a recommendation regarding an
3 agreement for the disposition of culturally
4 unidentifiable Native American human remains in the
5 possession of the University of Nebraska State
6 Museum in Nebraska, and the first speaker will be
7 Priscilla Grew, who is the Director and NAGPRA
8 Coordinator of the University of Nebraska State
9 Museum.

10 COLIN KIPPEN: Before you begin for committee
11 members, that's tab number 7 in your materials. As
12 is again our focus and our process, we have received
13 voluminous information on this and the conversation
14 you will hear now will simply be the tip of the
15 iceberg with the committee able to ask questions to
16 flesh out anything that needs to be fleshed out. So
17 please identify yourself for the record and thank
18 you for appearing.

19 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
20 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**
21 **NATIVE AMERICAN HUMAN REMAINS IN THE UNIVERSITY OF**
22 **NEBRASKA STATE MUSEUM, NE**
23 **PRESENTATION**
24 **PRISCILLA GREW**

25 PRISCILLA GREW: Thank you, Mr. Chairman, and

1 members of the NAGPRA Review Committee and members
2 of the audience. I am Priscilla Grew, Director of
3 the University of Nebraska State Museum and I'm the
4 NAGPRA Coordinator for the University of Nebraska.
5 I've been in that position since 1998.

6 Today, I would like to join a group of tribes
7 in requesting a committee recommendation regarding
8 the disposition of culturally unidentifiable remains
9 from Michigan. This request concerns fragmentary
10 remains of two juveniles collected in Michigan in
11 1884 that came into the possession of the University
12 of Nebraska State Museum in 1894. And it's a
13 special honor for me on a personal basis that my
14 great-grandfather, Charles Croswell, was governor of
15 Michigan from 1877 to 1881, so it's kind of a nice
16 circle here to close.

17 These remains were examined by our forensic
18 anthropologist consultant who helped us prepare the
19 University of Nebraska NAGPRA inventory in 1995.
20 They were included in the museum's formal inventory
21 approved by the anthropology curator and professor
22 Thomas Myers in 1998, and we're pleased now that
23 with the leadership of the tribes in Michigan it is
24 now possible under the process to come before the
25 committee and request a recommendation regarding the

1 disposition of these remains since they are
2 culturally unidentifiable and we had very limited
3 information about them. We have provided the
4 committee and the Park Service with all the
5 documentation that we have in our records.

6 We are being joined in this effort and
7 certainly the first contacts we had were with the
8 Little Traverse Bay Bands of Odawa Indians. The
9 other tribal partners in this request are the Bay
10 Mills Indian Community, the Keweenaw Bay Indian
11 Community, the Lac Vieux Desert Band of Lake
12 Superior Chippewa Indians, the Grand Traverse Band
13 of Ottawa and Chippewa Indians, the Saginaw Chippewa
14 Indian Tribe. Mr. Johnson, who was I believe
15 another agenda item, wrote one of the support
16 letters for this. And then I've just provided the
17 staff with two additional letters that came in and
18 I'm sure he can provide these to the committee.
19 These are from Sandra Kaye Massey, Historic
20 Preservation Officer of the Sac and Fox Nation of
21 Oklahoma, and a letter from Dan Rap (phonetic),
22 Traditions Repatriation Committee Chairman, and
23 Clarence White, Traditions Repatriation Committee
24 Elder from the Pokagon Band of Potawatomi Indians in
25 Michigan. And their letters are in full support of

1 this request for recommendation.

2 I did just want to add that we do have in our
3 collection, and I provided the information in the
4 template that we submitted, we do have some funerary
5 objects from Michigan that were - entered the museum
6 from the same collector but our specialists are not
7 able to determine and would not be able to present
8 for a formal NAGPRA proceeding that these objects
9 were actually affiliated with these two individuals.
10 But our plan and the result of this consultation is
11 that we would process a Federal Register notice for
12 repatriation of those objects to the same tribal
13 coalition if this recommendation is approved. That
14 concludes my introductory remarks, Mr. Chair.

15 COLIN KIPPEN: Thank you.

16 Good morning. Would you please identify
17 yourself to the committee?

18 **WINNAY WEMIGWASE**

19 WINNAY WEMIGWASE: (Native American language.)
20 My name is Winnay Wemigwase, and I'm here
21 representing the coalition of tribes from Michigan.
22 I am the Vice President of MACPRA, which is the
23 Michigan Anishnaabek Cultural Preservation and
24 Repatriation Alliance. It represents all of the
25 federally recognized tribes in Michigan and our

1 state historic tribes as well. And I'm just here to
2 just reiterate what, you know, Sandra had said about
3 all of the support that we've received for this, and
4 this is based on our oral tradition and our cultural
5 belief in that we are all related. We are all
6 Anishnaabek. We all come from various tribes that
7 are basically Odawa, Ojibwe, and Potawatomi from
8 Michigan. Our ancestors are our responsibility to
9 take care of and to ensure that their lives on earth
10 make their complete end. And until the remains of
11 these ancestors can be returned back home, that
12 can't be completed. And so it's very important to
13 us to ensure that that happens and we've had an
14 excellent working relationship with the - with
15 Sandra and it's actually been an enjoyable process
16 to go through.

17 Again, she did state the different tribes that
18 individually are represented with this particular
19 claim and we have, as you can see, solicited and
20 received support from historic tribes too that have
21 had a historic presence in the area and we are all
22 in agreement that this is something that needs to
23 happen. *Miigwetch.*

24 COLIN KIPPEN: Thank you.

25 Just for my purposes, the tribes that have

1 joined in the agreement, could you just list who
2 those are for us again?

3 WINNAY WEMIGWASE: Yes, the tribes are the
4 Little Traverse Bay Bands of Odawa Indians, the Bay
5 Mills Indian Community, the Keweenaw Bay Indian
6 Community, Lac Vieux Desert Band of Lake Superior
7 Chippewa Indians, the Grand Traverse Band of Ottawa
8 and Chippewa Indians, and the Saginaw Chippewa
9 Indian Tribe. And then we've also received support
10 from the Sac and Fox Nation of Oklahoma and the
11 Pokagon Band of Potawatomi Indians from Dowagiac,
12 Michigan. And we also do have a representative here
13 as well from the Saginaw Chippewa Tribe, which is
14 Willie Johnson. He's sitting right behind me.

15 COLIN KIPPEN: Would you like to testify before
16 the committee? Please. Thank you. Please identify
17 yourself.

18 **WILLIAM JOHNSON**

19 WILLIAM JOHNSON: Good afternoon. Are we in
20 that afternoon time yet? Good morning. I've got my
21 watch set to Eastern. My name is William Johnson.
22 I'm the Curator for the Ziibiwing Center in Mt.
23 Pleasant, Michigan, and I'm also the NAGPRA
24 Coordinator on behalf of the Saginaw Chippewa Indian
25 Tribe of Michigan, and I'm very pleased to be here.

1 And as we well know, the Michigan Anishnaabek
2 Cultural Preservation and Repatriation Alliance is
3 made up of the 12 federally recognized tribes in the
4 state of Michigan. There's two state historic
5 tribes, and we lend our full support to Winnay, as
6 we receive these remains from these individuals that
7 were excavated in Midland, Michigan.

8 COLIN KIPPEN: And are you in support of this
9 disposition?

10 WILLIAM JOHNSON: Yes, sir. The Saginaw
11 Chippewa Indian Tribe of Michigan supports this
12 disposition, this agreement between the museum and
13 the Michigan tribes.

14 WINNAY WEMIGWASE: I'd also like to just make
15 special note that in order to be a representative
16 for MACPRA, for the coalition itself, each one of
17 the representatives has to be deemed a designee by
18 each of our tribes by tribal resolution.

19 COLIN KIPPEN: Thank you. Do we have any
20 comments or questions by any of the members of the
21 committee?

22 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

23 SONYA ATALAY: Yes, excuse me, I have a
24 question. I noted in here that you have a letter of
25 support from the Sac and Fox Tribes and I know that

1 they're not Anishnaabe, and so I wonder if you could
2 speak a little bit about why it is that you have
3 included that letter and just give a little more
4 detail and background on that.

5 WINNAY WEMIGWASE: In doing our work with
6 repatriation and dispositions, we try very hard to
7 be respectful of all of those individuals that could
8 possibly be affected by our work or our decision.
9 We also like to function in a way that, you know,
10 again we emphasize the fact that actually Native
11 people are all - we're all related to each other and
12 to show that respect, even though the Sac and Fox
13 Nation doesn't have a physical, you know, presence
14 in Michigan right now, at one time they did. And
15 it's been through the research that's been done, you
16 know, it's hard at some point to say exactly who
17 these individuals are, you know. We can't go back
18 and ask them specifically. So we wanted to ensure
19 that all of the voices were heard and so therefore
20 that's why we always try to solicit the support of
21 those tribes that even though physically today they
22 aren't in Michigan they were at one time.

23 SONYA ATALAY: Thank you.

24 COLIN KIPPEN: Thank you. Are there any further
25 comments or questions?

1 ERIC HEMENWAY: I have a comment.

2 COLIN KIPPEN: Mr. Hemenway.

3 ERIC HEMENWAY: For the record, I have to recuse
4 myself from voting on this matter as I personally
5 worked with the museum and with the tribes on this.
6 So I recuse myself.

7 COLIN KIPPEN: Thank you. Any further
8 discussion by the committee?

9 Do I have a motion?

10 **REVIEW COMMITTEE MOTION**

11 DAN MONROE: Move approval of this request.

12 COLIN KIPPEN: It has been moved. Do I have a
13 second?

14 ALAN GOODMAN: Second.

15 COLIN KIPPEN: It has been seconded by
16 Mr. Goodman. Is there any discussion?

17 There appears to be no discussion. I call the
18 question. All those in favor say aye.

19 SONYA ATALAY: Aye.

20 ALAN GOODMAN: Aye.

21 COLIN KIPPEN: Aye.

22 DAN MONROE: Aye.

23 COLIN KIPPEN: All those opposed say no. This
24 matter is concluded. We have - we have approved of
25 it.

1 Before you leave I would like again, as I have
2 with previous witnesses who have come before us,
3 your comments on the form that we have used, that we
4 have adopted to try to assist the way that this
5 information is being presented. Did you find it of
6 any use and what are your comments one way or the
7 other on it?

8 PRISCILLA GREW: Again, I'm Priscilla Grew from
9 the University of Nebraska State Museum, and I must
10 say it was a pleasure to work with this form. My
11 first appearance before the committee was in 1998 in
12 Santa Fe when I didn't have anything like this to
13 work with. And I found that this is a real step
14 forward, and especially for museums like ours where
15 previously we've not really had a good way to work
16 very well with some of these new tribal coalitions
17 that are coming up. I think this is - it's very
18 good to set out exactly the array of information
19 that the committee is going to expect from the
20 museum and from the tribes. And so I found it very
21 helpful. I'm sure you'll - you'll revise it as you
22 go along but I think it's a major step forward to
23 have this.

24 WINNAY WEMIGWASE: I would also like to say that
25 I believe that the form is very helpful and just

1 that, you know, with the plethora of information
2 that we are able to collect for these activities
3 it's nice to have it in a real simple format that
4 can be looked at quickly and easily. And just to
5 know that because of the simplicity of the form, you
6 know that you have all of the background information
7 that's there because you know that that's required.
8 But yet you can kind of get it all kind of in a
9 nutshell so it's very helpful I would say.

10 COLIN KIPPEN: On behalf of the committee I
11 would like to thank all of you for the work you've
12 done, the way you've collaborated and consulted, and
13 the way you've worked together. The materials were
14 very easy to understand, and your testimony assisted
15 us in literally touching the mountaintops so that we
16 could make this decision in a very, I think, fair
17 and expeditious way. So thank you for your work.

18 Mr. Tarler.

19 DAVID TARLER: Mr. Chairman, as you explained
20 this morning, with respect to your position on the
21 Review Committee as the at-large member, your term
22 on the Review Committee officially ends on August
23 the 8th. At the last Review Committee meeting in
24 San Diego, a list of persons to be submitted to the
25 Secretary for appointment to the at-large position

1 was begun and your name was placed on that list with
2 the consent of the other members of the Review
3 Committee. We are going to complete the list of
4 persons for the Secretary for the at-large position,
5 and the next item on the agenda are nominations for
6 the at-large member.

7 COLIN KIPPEN: We have - we're ahead of schedule
8 and so this appears on the agenda as the 1 o'clock
9 item, which was supposed to have been begun after
10 lunch.

11 DAVID TARLER: Correct.

12 COLIN KIPPEN: And the previous matter was a
13 matter that we had scheduled for tomorrow, which we
14 have just handled.

15 **NOMINATIONS FOR AT-LARGE MEMBER**

16 COLIN KIPPEN: So moving forward, nominations
17 for at-large member, is - are there any motions or
18 any discussion by any of the members on the
19 committee?

20 DAN MONROE: I think our experience has been
21 that there is an advantage in making sure that there
22 are a number of options, choices that the Secretary
23 can - from which the Secretary may choose and
24 recognizing that, Colin, your name has already been
25 submitted, I would like to also submit Rosita Worl's

1 name and nomination as the seventh member.

2 SONYA ATALAY: And I would also like to submit
3 two names for nomination, and those are Chip
4 Colwell-Chanthaphonh and Clay Dumont.

5 COLIN KIPPEN: With respect to - could we -
6 could you spell the last name on Chip? Actually
7 could you just spell both of - I think Dumont is
8 easy but the other one I'm not sure - I'm not sure I
9 heard you.

10 SONYA ATALAY: Okay. You just want the last
11 name?

12 COLIN KIPPEN: Yeah, just so that they know for
13 the record who is being put up.

14 SONYA ATALAY: Actually since - I don't know if
15 I can do this, but since Chip is here could you
16 actually spell your name because I'm not sure that I
17 would get it accurate?

18 CHIP COLWELL-CHANTHAPHONH: Can I just give you
19 my card, (comment inaudible).

20 COLIN KIPPEN: Oh, thank you. So we have both?
21 Is Mr. Dumont - is it -

22 SONYA ATALAY: Yes, Mr. Dumont is here as well.

23 COLIN KIPPEN: Mr. Dumont?

24 CLAYTON DUMONT: Yes.

25 COLIN KIPPEN: I just wanted to recognize that

1 you were here - present today. Thank you.

2 Before we move forward I'd just like to ask the
3 - ask Sherry Hutt, are any of the members who have
4 been nominated presently being nominated for other
5 positions on the NAGPRA Review Committee? Are any
6 of the three that have - I guess we have four. I
7 was nominated the last time and voted upon. I guess
8 we have three new names that have surfaced, are any
9 of those three presently being nominated for other
10 positions on the NAGPRA Review Committee?

11 SHERRY HUTT: Oh, you're referring - all right.
12 Thank you. The seventh member - or the member from
13 tribes that was open, the position that Rosita Worl
14 previously had -

15 COLIN KIPPEN: Right.

16 SHERRY HUTT: - the situation is that in
17 response to the Federal Register notice in - was
18 it -

19 DAVID TARLER: It closed February 23rd, 2009.

20 SHERRY HUTT: Yeah, it closed February 23rd. We
21 had kept it open for 60 days. So we had published
22 it in December of '08. We received seven
23 nominations from tribes. The nominee needed to be
24 from a tribe but did not need to be a religious
25 leader. So with the seven nominations we had their

1 resumes and the names. We submitted all of those to
2 the Secretary in due course. The Secretary - I have
3 been advised that the Secretary made a decision.
4 The decision is not public because he has not
5 formally notified the person and that person is not
6 Dr. Rosita Worl, and so I was informed of that by
7 the Secretary's office, or - and none of the other
8 people on this list are one of - are the appointee.
9 And the appointment wasn't finalized in time for
10 that person to be here, but none of the four names
11 that you have mentioned in nomination for the at-
12 large member are the person appointed by the
13 Secretary.

14 COLIN KIPPEN: Is it a requirement that there be
15 a unanimous vote by this body to recommend the
16 seventh member?

17 SHERRY HUTT: It's consensus.

18 DAVID TARLER: It's consensus.

19 COLIN KIPPEN: It's consensus.

20 DAVID TARLER: Yes, it's - yes.

21 COLIN KIPPEN: Consensus.

22 DAVID TARLER: Consented to by all.

23 CARLA MATTIX: Consented to by all -

24 COLIN KIPPEN: Consented to by all?

25 CARLA MATTIX: - of the existing members.

1 COLIN KIPPEN: So consented to by six.

2 (Inaudible comment.)

3 COLIN KIPPEN: I'm just asking a question here.

4 DAVID TARLER: Consented to by all of the
5 members.

6 CARLA MATTIX: Consented to by all of the
7 members in the three - in (A) and (B), which are the
8 three from Native Hawaiian and tribal organizations
9 or three from the museum and scientific
10 organizations.

11 COLIN KIPPEN: Yeah, it does make sense. The
12 reason I'm asking the question is a matter of
13 following our rules because if we - we don't have
14 consensus - we don't have the possibility - we have
15 the possibility of achieving consensus today amongst
16 those who are here, but we do not have the
17 possibility of achieving full consensus, and it
18 should be clear that I will be recusing myself from
19 this vote.

20 DAVID TARLER: You're not eligible.

21 CARLA MATTIX: You're not eligible to vote.

22 COLIN KIPPEN: Yeah, and I will not be - in any
23 event I will be, but the question procedurally is
24 can we be forwarding a name where we have one of our
25 tribal members not here today?

1 SHERRY HUTT: The appointment of the member that
2 I've been advised will be appointed is not official
3 until the Secretary signs his name on the document,
4 and at the moment that he signs his name on the
5 formal appointment letter that's the point that it's
6 official and I can disclose it. So that person is -
7 it's not as if we're having a meeting without that
8 person present. All right? They're - I was hoping
9 it would be resolved before Friday so I could at
10 least announce it, but as of Friday it was not. So
11 at this time what you have is an open position. All
12 I can advise you is that I have been advised by
13 actually the White House liaison in the Secretary's
14 Office as to who that nominee will be - who the
15 appointee will be and it's none of the four that you
16 have now on your list.

17 DAN MONROE: Your question is that we also have
18 a tribal member missing from this meeting -

19 SHERRY HUTT: I'm sorry. Yes.

20 COLIN KIPPEN: Right. That's my question.

21 DAN MONROE: - who is a member of the committee.

22 SHERRY HUTT: Correct, Donna Augustine.

23 DAN MONROE: And there are - there's a
24 requirement that there be a nomination that involves
25 three tribal members, three museum or other agency

1 members. And at present we can't, as I see it,
2 fulfill that requirement.

3 COLIN KIPPEN: That's my question. My question
4 is can we fulfill the requirement of law in the
5 absence of a member? What is the - counsel?

6 STEPHEN SIMPSON: We're conferring, Mr. Chair.

7 CARLA MATTIX: Yeah, we're going to take a look
8 at this and then we'll revisit this after lunch.

9 COLIN KIPPEN: Can we just take a - then we'll
10 just defer the matter for the time being,
11 understanding that we have three new names to be
12 moved forward, but there's a procedural issue that I
13 think we need to get right before we move forward.

14 CARLA MATTIX: Yes.

15 STEPHEN SIMPSON: Exactly.

16 ALAN GOODMAN: Colin, can I ask -

17 COLIN KIPPEN: Mr. Goodman.

18 ALAN GOODMAN: - an additional question for
19 counsel? Is our - are we today hopefully agreeing
20 or reaching consensus on a slate that would go
21 forward or a nominee that would go forward?

22 CARLA MATTIX: It would be a slate once we get
23 past this procedural issue.

24 ALAN GOODMAN: Thank you.

25 STEPHEN SIMPSON: The statute specifically says

1 - it calls for a list.

2 COLIN KIPPEN: All right. Mr. Tarler, next
3 matter.

4 DAVID TARLER: You can break.

5 COLIN KIPPEN: All right. Well, we're - it's -
6 and when will we reconvene?

7 DAVID TARLER: We will reconvene at 1:00 p.m.

8 COLIN KIPPEN: At 1:00 p.m. Thank you very
9 much. We've concluded our matters a bit early. I
10 would ask that you return after lunch. There's a
11 good chance that we will be able to get to more
12 items that are scheduled for tomorrow and we will be
13 having public comments as part of the afternoon
14 session. So thank you for your attendance and I
15 hope to see you this afternoon.

16 **LUNCH**

17 COLIN KIPPEN: Good afternoon. I'd like to call
18 the NAGPRA Review Committee meeting back to order.
19 All of our members are here. Good afternoon,
20 members.

21 Mr. Tarler.

22 DAVID TARLER: Mr. Chairman, we will return to
23 the matter of the at-large member.

24 **NOMINATIONS FOR AT-LARGE MEMBER - CONT'D**

25 COLIN KIPPEN: When last we were speaking about

1 this matter right before lunch we asked the question
2 of our DFO and the legal staff, Carla Mattix and
3 Stephen Simpson, to advise us about the question of
4 how to nominate the seventh member. And I believe
5 that we ended on that note, and so now we're going
6 to pick up where we left off.

7 Mr. Tarler.

8 DAVID TARLER: What we intend to do,
9 Mr. Chairman, is to deliberate on the four nominees,
10 the three that were nominated before lunch and
11 yourself, and if we reach consensus on these
12 nominees then we are trying to contact Donna
13 Augustine to obtain her consent to that list as
14 well. Optimally, we will have consent from all of
15 the Review Committee members to an agreed-to list
16 today. And if not, then the Federal Advisory
17 Committee Act provides that administrative meetings
18 can be held in order to come to a consensus list.

19 COLIN KIPPEN: So we could do a telephonic
20 conference, is that my understanding?

21 CARLA MATTIX: Right.

22 COLIN KIPPEN: To move this?

23 CARLA MATTIX: Right. You could follow - if we
24 don't come to some conclusion today and get a hold
25 of Donna then we can come to - we can - you guys can

1 reconvene by phone to address this administrative
2 matter.

3 COLIN KIPPEN: Okay. So then - go ahead.

4 CARLA MATTIX: I mean, the other - I mean,
5 ideally we could most likely get a hold of Donna
6 after the meeting and not have a full telephone
7 conference and if she concurs that would be fine and
8 go that route.

9 COLIN KIPPEN: Actually what I'd prefer to do is
10 I prefer to just have this matter just if you can
11 get in touch with her then we'll break into the
12 meeting, and we can have a conversation and a vote
13 on that. But what I would prefer to do otherwise is
14 just to set up a telephonic conference of our
15 members to just approve the - to approve that matter
16 and to move it forward. I'm just not real clear
17 now, is that - so - go ahead, Sherry.

18 SHERRY HUTT: My concern - my concern is,
19 Mr. Chairman, that it took three months of concerted
20 effort to try and get someone appointed before this
21 meeting. If you all concur on the slate of four and
22 we need only get a hold of Donna and ask if she then
23 concurs, if she concurs then we immediately prepare
24 that package for the Secretary so that we can get
25 that moving so that we don't have a cliffhanger in

1 terms of the appointment for the next meeting and
2 any business in preparation for that meeting because
3 work goes on, as you know, in preparation for the
4 meeting in consultation between the DFO and the
5 Chair. If Donna does not concur or has questions,
6 then we could key off of that and schedule a
7 telephone conference. But if it's simply a matter
8 of a discussion with her since she has the emails
9 with all of the nominee vitas, the resumes, then if
10 it's a simple matter as that then we could move that
11 package immediately to the Secretary.

12 COLIN KIPPEN: Do we have all the CVs of
13 everyone who is being nominated at the present time?

14 SHERRY HUTT: Yes, we do.

15 COLIN KIPPEN: And do we all have them? Do all
16 the committee members have them?

17 SHERRY HUTT: They've been emailed among you,
18 and I'll get electronically the last two from Sonya.

19 COLIN KIPPEN: Dan?

20 DAN MONROE: Go ahead.

21 COLIN KIPPEN: I guess what I'm - I'm just
22 making a procedural point here. My procedural point
23 is I'm not sure that everybody has all the
24 information. I just don't know. My sense is that
25 before we make a decision I just want to be clear

1 that the way I will always expect we operate is that
2 we get the information in front of us and we
3 deliberate upon it and then we make a decision just
4 as you've provided to us.

5 So that is in part the reason I wanted to have
6 it - if we could not get all of the information in
7 front of us and look at it and review it and
8 deliberate upon it, then I wanted to set this to a
9 time when you could email those to everyone,
10 everyone would have them for purposes of reviewing
11 them, and just have a telephonic conference where we
12 would do that. We could set that in a very short
13 timeframe to be able to do it, but I am more
14 comfortable with the committee having in front of it
15 the information they would want to be considering to
16 make a decision. I'm not saying anything about any
17 of the people involved, some of whom I know very
18 well, some of whom I don't - I just know in passing.
19 I just think that as a procedural matter you need to
20 follow - we need to have a way that we do business.
21 And so that is my preference.

22 DAN MONROE: Mr. Chair, I'd like to suggest that
23 there be a commitment on the part of all the - if my
24 proposal is supported by the committee - on
25 everyone's part to commit in the near term to have a

1 teleconference. I think it's important to have
2 actual dialogue among the committee members on this
3 issue. That's traditionally been the case. I think
4 that the information has been forwarded to my
5 knowledge but - and we don't want to extend this out
6 because we can't find the time to do a
7 teleconference. But I think that it's important to
8 actually have a conversation among all of the
9 existing members on this matter. So I would propose
10 that we actually manage this through a
11 teleconference that's set up within the next week
12 and a half or two weeks at longest.

13 COLIN KIPPEN: I would - I am very supportive of
14 that approach because then the committee is in a
15 position where for everyone who's involved and
16 everyone who is watching what we do, they understand
17 that we are a deliberative body that wants
18 information and we want it in advance of any
19 decision that we make. So I'm perfectly happy with
20 that approach. I think that's the right approach to
21 take, and I would direct that you please set up a
22 telephonic conference with our members here. It
23 need not be a long conference, but - and I also
24 think there's another teaching here, and that is
25 that meeting every six months is not sufficient to

1 do the work of this committee and this is a format
2 that we should be able to avail ourselves of more
3 frequently so that we will all be involved in these
4 issues without the expense and the time commitment
5 of having to travel from all parts of the country to
6 come to these meetings. So I like - I think it's a
7 good practice for us to begin to take advantage of
8 other ways of moving issues forward without face-to-
9 face meetings, though face-to-face meetings are
10 important. We need to figure out how to better do
11 this. So that's my intention and -

12 **DISCUSSION OF APPOINTMENT OF VICE-CHAIR**

13 SHERRY HUTT: Mr. Chairman, might I ask -

14 COLIN KIPPEN: Yes.

15 SHERRY HUTT: Would it be possible before you
16 adjourn this meeting to appoint one of your fellow
17 committee members as Chair in your absence should
18 your term expire before we're able to get the
19 Assistant Secretary to make the next appointment?

20 COLIN KIPPEN: That's another - another set of
21 issues that I think I would like to discuss. I'm
22 not sure the appropriate time to discuss now, but
23 that's another issue. And the reason I'm raising
24 this is that the requirement now is that our Chair
25 be elected. And so the requirement of any duties

1 that fall upon the Chair fall upon someone who was
2 supposed to be elected. For me to appoint someone,
3 to me appears to be a breach of the process. It
4 should be - perhaps maybe there should be some sort
5 of an election. And is that what you're suggesting?

6 SHERRY HUTT: Well, then during the course of
7 this meeting might you all then elect someone
8 because it was more than 90 days in the process to
9 reach an appointment and if it - and if we do not
10 return from this meeting with a package for the
11 Secretary the likelihood that we will be able to get
12 an appointment prior to the expiration of your term
13 is highly unlikely. And therefore if I might ask
14 that you elect someone Vice Chair in your absence.

15 COLIN KIPPEN: All right. Then that having
16 said, is there - is there a motion to elect a Vice
17 Chair to serve in the - in the event that I am not
18 reappointed by the Secretary of the Interior?

19 SHERRY HUTT: Excuse me, not to be technical but
20 if we're being absolutely precise on this, it's not
21 a matter of reappointment. There is no holdover
22 provision in the charter at this time, so if the
23 term expires and no appointment has yet been made,
24 you might still be appointed but there will be a gap
25 and that's my concern, not to ever have a gap.

1 COLIN KIPPEN: Right.

2 **REVIEW COMMITTEE MOTION**

3 ALAN GOODMAN: So if I have this right, in the
4 event that Colin Kippen's term expires before the
5 end of the next meeting and he is not reconfirmed
6 onto the committee, I'd like to nominate Dan Monroe
7 as committee Chair.

8 COLIN KIPPEN: So there is a - there is a motion
9 to nominate Dan Monroe. Is there a second?

10 ERIC HEMENWAY: I second.

11 COLIN KIPPEN: There is a second. Are there any
12 other nominations for Vice Chair? In that event,
13 there will be a - so all those in favor? Is there -
14 I'm going to call the question. Question called.
15 All in favor say aye.

16 SONYA ATALAY: Aye.

17 ALAN GOODMAN: Aye.

18 ERIC HEMENWAY: Aye.

19 COLIN KIPPEN: Aye.

20 All those opposed? The motion carries.

21 So we have someone who is now - Dan is in the
22 position where he is the - will be the Vice Chair
23 and will accede to that position in the event there
24 is a vacancy in the chairship.

25 **DISCUSSION OF CHANGES TO THE REVIEW COMMITTEE**

CHARTER

COLIN KIPPEN: So then this raises a question for me. Is - and this is - I want to direct this to counsel. In the last go-round we had a gap from the time that the - from our last meeting until the point at which certain documents needed to be filed. I believe there's a 90-day requirement and that certain documents need to be filed. Is there a need for us because we did not elect a Vice Chair to act in the stead, is there a need for us to make sure that any orders that were filed or signed by Dan at a time when he had not been elected to that position? Is there any requirements that we go back and assure that those have been appropriately handled?

CARLA MATTIX: Since Dan is here, let me ask him, because we were trying to get some verification on this. It was my understanding that Rosita Worl actually did sign the minutes of the last meeting and the Findings and Recommendations for the Onondaga dispute issue before the expiration of her term. Dan, did you sign those documents? Do you recall? Because it is - I'm pretty sure that Rosita signed those.

STEPHEN SIMPSON: Did you sign them or did

1 Rosita sign them?

2 DAN MONROE: I believe Rosita signed them.

3 CARLA MATTIX: So I think it made it - Rosita
4 was able to sign those while she was still acting as
5 Chair within her term.

6 DAN MONROE: I think it's important also to
7 clarify why this transition that occurred between
8 Rosita and myself transpired. The Interior
9 Department changed the charter. That was not done
10 certainly with any knowledge beforehand on my part
11 and I think that's true for all of the rest of the
12 committee members. So in the past we had a policy
13 in accordance with the charter such that a member
14 whose term expired continued to serve until another
15 member had been appointed and was in place to serve
16 to take up their term. What we now have is this
17 issue of gaps that's created by a change in the
18 charter. And I, during my term which was not sought
19 I would add, to step in until we could have this
20 meeting sought to have some explanation made to the
21 committee regarding the reasons for a change in
22 charter that create these kinds of problems. And
23 without going through that process I would just like
24 to encourage us as a Review Committee to communicate
25 to the Department of Interior our desire that that

1 charter be reviewed and that we go back to a
2 procedure by which a person who is serving in a term
3 continues to serve in that term even if their term's
4 formally expired until an appointment is made and
5 the next person is in place to step in, which
6 avoids, one, holes in the committee such as we've
7 had, and two, these kinds of issues as well.

8 COLIN KIPPEN: Sherry.

9 SHERRY HUTT: Let me - and to follow up on this
10 line of thought, I must tell you that the Program
11 learned that the - what we call the holdover
12 provision, we learned that it had been deleted when
13 we obtained the final copy of the charter as signed
14 in November. We did not know that it would be
15 deleted. We were not told that it was going to be
16 deleted. We did not ask for it to be deleted. So
17 the first knowledge that we had of the deletion of
18 that phrase came in November, which was when it was
19 signed at the middle of November, which was after
20 the Review Committee meeting in October. I don't
21 want any implication that the Program knew or
22 requested that that be deleted.

23 In fact, we wish that it had not been deleted
24 quite candidly. And in furtherance of that desire
25 it is already in process, as I understand through

1 the chain of command, to reissue the charter with
2 the holdover provision reinserted. Now, whether the
3 Secretary will do so, I don't know whether he will,
4 but we're asking whether they wouldn't mind doing
5 that so that we don't need to wait until two years
6 later. And I've asked counsel what that means for
7 the timing of the charter and I've been told that
8 the charter is still effective from November of '08
9 and it still is renewed every two years, so it won't
10 extend by so many months but it would be an
11 amendment to the existing document. And we do have
12 the - our documents start in the Park Service and
13 they go up through the Assistant Secretary to the
14 Secretary to the White House, and in the case of a
15 few committee members they're vetted by the White
16 House. And so that package, that process through
17 the policy office in the Park Service they concur
18 with that request and that's already begun.

19 DAN MONROE: Thank you, Sherry. And that's why
20 I mentioned Department instead of Program. So I
21 didn't mean to imply that there was any action on
22 the part of the NAGPRA Program to make that change,
23 but it does create obvious problems and we
24 appreciate your support to correct it.

25 COLIN KIPPEN: I want to thank you for your

1 comments, Dan, as well as you, Sherry. The reason I
2 asked my question to Carla and Stephen is I wondered
3 whether there was any gap that we needed to ratify
4 by vote at this committee. That was my intention.

5 DAN MONROE: Right.

6 COLIN KIPPEN: Is there anything we need to
7 ratify by vote at this committee because a gap
8 occurred and because documents may have been signed,
9 you know, as this new rule kicks into effect in
10 November? That was the spirit of my question, and I
11 still have that question, because if we need to
12 ratify something we should do it now so that for all
13 intents and purposes past actions are settled by
14 this committee.

15 DAN MONROE: To my knowledge everything that I
16 signed was signed by Rosita.

17 STEPHEN SIMPSON: Yeah, to our knowledge that's
18 - as Carla stated, to our knowledge that's the case
19 as well, Mr. Chairman.

20 COLIN KIPPEN: Okay. All right. Then that's
21 fine. That's good. You've addressed this.

22 Since we have been very briefly discussing this
23 new charter, I will tell you that there is something
24 that really troubles me about the charter and I want
25 to identify it now, and that is there is no quorum

1 requirement in the new charter. So if a meeting is
2 held and one person shows up, you could have action
3 by the committee. Now there is a requirement that
4 you have a member of one set of three and a member
5 of another set of three in order to be able to - and
6 I think there's a number requirement as well, isn't
7 there? Isn't - what is the - review for us please,
8 Carla, the requirement of who needs to be here for
9 us to be able to do business under the old charter.

10 CARLA MATTIX: I don't have the old charter in
11 front of me, but there was a quorum provision in the
12 previous charter. And it is another one of these
13 provisions that I was not aware it was taken out of
14 the - the Departmental office removed it.

15 COLIN KIPPEN: And I would ask this committee if
16 they would just take a moment if you would like to
17 comment on this. The reason I raise this for you is
18 I think the strength of the committee is the varied
19 perspectives that we bring to this work, and I think
20 the committee - it's not about an expedient process.
21 It's about a thoughtful deliberative process, and I
22 don't want there to be a possibility that action
23 could be taken with one person present to make a
24 vote and to have the hearing and to do all of that
25 kind of work. So again I - and if any of you have

1 strong feelings about this, I would ask you to
2 please state it for the record because I would like
3 the Secretary to revisit and change that position.

4 DAN MONROE: I support that.

5 ALAN GOODMAN: Well, I support that and I wonder
6 if we ought to make a recommendation following Dan's
7 language but perhaps broadening it out a little bit
8 more to say that, you know, in order for the Review
9 Committee to do its business and function properly
10 it has to be well-represented and the charter ought
11 to reflect that need to do business by making sure
12 that it is fully constituted and balanced and well-
13 represented.

14 COLIN KIPPEN: So could we make a motion to that
15 effect? Is that necessary for us to have that
16 intention expressed up the chain to the Department?

17 SHERRY HUTT: Do you have some preferential
18 language you would like? That would be helpful.

19 COLIN KIPPEN: I would - well, do any of you
20 have a -

21 SHERRY HUTT: Do you want to say -

22 **REVIEW COMMITTEE MOTION**

23 DAN MONROE: I think we basically just would
24 like to put a motion on the table to the effect that
25 we strongly encourage the Secretary to make changes

1 to the current provisions in the charter to address
2 the following issues. First, that the holdover
3 provision that previously held sway with regard to
4 appointments be reinstated, and secondly, that we
5 request the establishment of provisions such that
6 the committee may not meet unless there is
7 representation of at least, let's say, five members.
8 Does that sound fair?

9 COLIN KIPPEN: Five members with a
10 representative from each of the two lines -

11 DAN MONROE: Yes, right.

12 COLIN KIPPEN: - the scientific as well as the
13 tribal community. Is there a -

14 STEPHEN SIMPSON: I would just point out that
15 the way the Statute is set up if you have five
16 members there has to be representation from each of
17 those.

18 COLIN KIPPEN: All right. All right.

19 DAN MONROE: Okay.

20 COLIN KIPPEN: So there has to be five members.

21 STEPHEN SIMPSON: Because you've got three from
22 each, so -

23 COLIN KIPPEN: Is there a second to that motion?

24 ALAN GOODMAN: Second.

25 COLIN KIPPEN: All right. Any discussion?

1 Call for the question. All in favor say aye.

2 SONYA ATALAY: Aye.

3 ALAN GOODMAN: Aye.

4 ERIC HEMENWAY: Aye.

5 COLIN KIPPEN: Aye.

6 DAN MONROE: Aye.

7 COLIN KIPPEN: All opposed. Thank you.

8 All right, Mr. Tarler, what's our next matter?

9 DAVID TARLER: We've been very successful today
10 with requests for recommendations regarding
11 agreements for the disposition of culturally
12 unidentifiable Native American human remains, and I
13 suggest that we now look at the item that was
14 scheduled for tomorrow at 8:40 a.m., a request for
15 the recommendation from the Central Michigan
16 University, Museum of Cultural and Natural History.
17 And I would call William Pretzer and William
18 Johnson.

19 DAN MONROE: Mr. Chair, could I make a
20 recommendation, and this is unprecedented for this
21 committee I might add, I think that this process
22 with respect to making decisions regarding
23 unidentified human remains is fantastic and
24 obviously proving very beneficial. However, from
25 the standpoint of those in attendance, it becomes

1 very, very difficult to actually have a sense of
2 what is transpiring because you don't have,
3 fortunately for most of you, a 15-inch notebook to
4 carry around to read all of this material. So my
5 suggestion is that we, in order to assure that
6 everyone has a sense and can learn from these
7 decisions, that we just briefly summarize the issues
8 regarding unidentified human remains, not in the
9 detail that we're giving them, but so that those who
10 are present and participants in the meeting can have
11 a better sense of what actually is - are the issues
12 and what's the nature of the case. I'd suggest that
13 be quite a straight-forward, not-complex summary,
14 but I think that would be helpful.

15 COLIN KIPPEN: Mr. Tarler?

16 I think that would be helpful as well. I think
17 this morning what I was trying to explain to the
18 audience -

19 DAN MONROE: Right.

20 COLIN KIPPEN: - was that there is a
21 deliberative process here but I think it would be
22 good to just have that matter just summarized.

23 Mr. Tarler, would it be possible for you to
24 provide us with a very quick summary of the issues
25 before us on this matter?

1 DAVID TARLER: Mr. Chairman, I'm sorry. Before
2 Mr. Pretzer begins, I've asked him if he - since he
3 is the closest to the matter if he would present a
4 summary to the Review Committee and to the audience.

5 COLIN KIPPEN: Thank you. Good afternoon, sir.
6 And again, our intention is simply to make this more
7 transparent to the people who are here so they
8 understand what it is we're about and the issues
9 that are before us. So if you could just give us
10 some background information. We have your materials
11 before us, and the committee will ask questions if
12 they have any, so thank you.

13 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
14 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**
15 **NATIVE AMERICAN HUMAN REMAINS IN THE POSSESSION OF**
16 **CENTRAL MICHIGAN UNIVERSITY, MUSEUM OF CULTURAL AND**
17 **NATURAL HISTORY, MI**
18 **PRESENTATION**
19 **WILLIAM PRETZER**

20 WILLIAM PRETZER: Thank you. I will do my best.
21 Good afternoon. My name is Bill Pretzer. I'm the
22 Director of the Museum of Cultural and Natural
23 History at Central Michigan University in Mount
24 Pleasant, Michigan. I became the director three
25 years ago, and at that time discovered that there

1 was material held by the museum that had been
2 properly inventoried in the 1990s by the then-museum
3 staff. All of the material had been identified as
4 culturally unidentifiable. That meant that there
5 was no requirement on the university's part to
6 repatriate the material. Nevertheless, after
7 consultation with representatives from the Saginaw
8 Chippewa Indian Tribe of Michigan and the Michigan
9 Anishnaabek Cultural Preservation and Repatriation
10 Alliance, and the senior administrators at Central
11 Michigan University, I determined that the best and
12 proper course of action was to dispose of that
13 material to the local Indian tribe, the Saginaw
14 Chippewa Tribe.

15 The material is of an age based on
16 archaeological evidence that a direct cultural
17 identification could not be established.
18 Nevertheless, it comes from an area in which there
19 is a traditional presence by Anishnaabek peoples
20 including the Saginaw Chippewa Tribe. The
21 university feels that the proper thing is to return
22 that material which came to it from donations by
23 amateur archaeologists with some involvement of
24 university undergraduates. We reviewed that
25 material, brought in physical anthropologists, who

1 have identified the material as of Native American
2 ancestry. All of the archaeological evidence points
3 to Native American ancestry, and therefore we simply
4 feel the proper thing is to return it using the
5 process of a recommendation by the Review Committee.
6 Does that address the issues as you see them?

7 COLIN KIPPEN: Could you summarize how many -

8 WILILAM PRETZER: Sure. I'd be happy to.

9 COLIN KIPPEN: - what the breakdown is in terms
10 of remains and items.

11 WILLIAM PRETZER: Sure. The museum holds a
12 minimum number of remains of 144 individuals
13 identified as of Native American ancestry and 374
14 affiliated funerary objects from three sites in mid-
15 Michigan. And this request is based on extensive
16 archaeological documentation that has already been
17 provided to the committee, along with the
18 traditional histories of tribal presence in Michigan
19 presented by the Michigan tribal alliance, the
20 physical identification of the remains by two
21 physical anthropologists, and letters of support
22 from the relevant tribes.

23 COLIN KIPPEN: Go ahead, now make your - begin
24 your presentation, and thank you for that
25 background. I think that was very helpful.

1 WILLIAM PRETZER: My presentation continues,
2 should the committee recommend and the Secretary
3 approve this request these individuals will be
4 reinterred by the Saginaw Chippewa Tribe later this
5 year. With that I would like to introduce or
6 reintroduce my friend and colleague William Johnson
7 of the Saginaw Chippewa Indian Tribe and Curator of
8 the Ziibiwing Cultural Center.

9 COLIN KIPPEN: Mr. Johnson, good afternoon.

10 **WILLIAM JOHNSON**

11 WILLIAM JOHNSON: Good afternoon, Mr. Chairman
12 and esteemed members of the NAGPRA Review Committee.
13 I have prepared some comments today and I would like
14 to read them to you.

15 (Native American language.) All my relations,
16 my spirit name is Little Black Diamond. I'm of the
17 Bear Clan. I'm Ojibwe Anishnaabe, and I represent
18 the Saginaw Chippewa Indian Tribe of Michigan. It
19 has been a long road for our Anishnaabek ancestors
20 to have traveled to this place. For the Saginaw
21 Chippewa Indian Tribe of Michigan, the journey began
22 in November of 1993, when Chief Ronald Falcon
23 received a letter from Tom Hanenberg (phonetic),
24 Curator of Education at the Central Michigan
25 University's Museum for Cultural and Natural

1 History. Mr. Hanenberg's letter provided a summary
2 of the Native American materials in the possession
3 and control of the museum. Importantly,
4 Mr. Hanenberg related that the museum staff was in
5 the process of inventorying the human remains and
6 associated funerary objects as required by NAGPRA
7 for the November 16, 1995 deadline. Thus began the
8 positive relationship with Central Michigan
9 University, the Museum for Cultural and Natural
10 History, the Saginaw Chippewa Indian Tribe of
11 Michigan, and other Indian tribes.

12 In May 1995, Mr. Hanenberg sent a letter to
13 Chief Gale Jackson of the Saginaw Chippewa Indian
14 Tribe of Michigan detailing the museum's efforts to
15 inventory the human remains and associated funerary
16 objects and to determine their cultural affiliation.
17 The museum's efforts revealed that the Tyra Site
18 20SA9, located in Saginaw County, Michigan, Indian
19 Mound Park Site 20IB1, located in Isabella County,
20 and Point Lookout Site 20AC18, located in Arenac
21 County, Michigan, originate from the area known as
22 the Saginaw Valley. However, the museum staff was
23 unable to determine a cultural affiliation to
24 present Indian - to present-day Indian tribes.
25 Mr. Hanenberg continued to provide open

1 communication in the development of positive working
2 relationships with numerous Indian tribes for the
3 proper and final disposition of human remains and
4 associated funerary objects in the possession and
5 control of CMU.

6 In October 1995, Kyle Prampton (phonetic),
7 Director of the Ziibiwing Cultural Society notified
8 Mr. Hanenberg that the tribe would like to continue
9 the dialogue about the museum's summary and
10 inventory and that tribal council resolution number
11 95-075 gave the ZCS authority to represent the
12 Saginaw Chippewa Indian Tribe of Michigan in matters
13 pertaining to NAGPRA. A month later the museum
14 published a Notice of Completion of Inventory of
15 Native American human remains and associated
16 funerary objects in the Federal Register. There the
17 matter remained for nearly 13 years as neither the
18 tribe nor the university museum were in a position
19 to pursue the disposal of these culturally
20 unidentified remains and associated funerary
21 objects.

22 We will forward to present-day time. In June
23 of 2008, myself and Shannon Martin of the Ziibiwing
24 Center met with Dean Gary Shapiro and Dr. William
25 Pretzer from Central Michigan University. Dean

1 Shapiro began the meeting by stating that as a
2 presidentially appointed representative for the
3 university he expressed that the university would
4 like to begin the process for disposition of the
5 culturally unidentifiable remains and associated
6 funerary objects within the university museum's
7 collection. Both Dr. Shapiro and Dr. Pretzer
8 extended the invitation to begin the disposition
9 process with the Saginaw Chippewa Indian Tribe of
10 Michigan, and Dr. Pretzer identified himself as the
11 university liaison that would begin working
12 intimately with the tribe and the Ziibiwing Center.

13 The next month, Dr. Pretzer, Director of CMU's
14 Museum of Cultural and Natural History, met with the
15 Michigan Anishnaabek Cultural Preservation and
16 Repatriation Alliance at the Ziibiwing Center in
17 Mount Pleasant, Michigan, to update the
18 representatives about plans to dispose of the
19 culturally unidentifiable human remains and
20 associated funerary objects to the MACPRA tribes.
21 The tribes in attendance included the Keweenaw Bay
22 Indian Community, the Lac Vieux Desert Band of Lake
23 Superior Chippewa Indians, the Little River Band of
24 Ottawa, the Little Traverse Bay Bands of Odawa, and
25 the Match-e-be-nash-she-wish Band of Gun Lake

1 Pottawatomi.

2 The human remains and associated funerary
3 objects currently in the possession and control of
4 Central Michigan University's Museum of Cultural and
5 Natural History are from the Tyra Site representing
6 a minimum number of 124 individuals and 358
7 associated funerary objects, Indian Mound Park Site
8 representing a minimum number of 18 individuals and
9 5 associated funerary objects, and Point Lookout
10 Site representing a minimum number of 2 individuals
11 and 11 associated funerary objects. Ultimately this
12 request for disposition is based on the following:
13 Based on cranial, facial, and dental features, the
14 human remains have been identified as being Native
15 American by the physical anthropologists Professor
16 Jacqueline Eng of Western Michigan University and
17 Janet Gardner of Western Ontario University. Thus
18 the human remains fit the description as specified
19 by NAGPRA, the physical remains of a person of
20 Native American ancestry.

21 The associated funerary objects are consistent
22 with those manufactured by the Anishnaabek and their
23 archaeological context makes it clear that they were
24 included in Native American burials. Thus, the
25 associated funerary objects fit the description as

1 specified by NAGPRA, objects that as part of the
2 death rite or ceremony of a culture are reasonably
3 believed to have been placed with or near at the
4 time of death or later with individual human
5 remains. The Saginaw Valley is considered
6 aboriginal land for the Anishnaabek. Evidence of
7 occupation from the Paleo-Indian through the
8 Historic periods has been well documented.

9 Therefore, the Saginaw Chippewa Indian Tribe of
10 Michigan, with the support of the Bay Mills Indian
11 Community, the Grand Traverse Band of Ottawa and
12 Chippewa Indians, the Hannahville Potawatomi Indian
13 Community, the Keweenaw Bay Indian Community, Lac
14 Vieux Desert Band of Lake Superior Chippewa Indians,
15 the Little River Band of Ottawa, the Little Traverse
16 Bay Band of Odawa, Match-e-be-nash-she-wish Band of
17 Gun Lake Pottawatomi, Pokagon Band of Potawatomi,
18 Sault Ste. Marie Tribe of Chippewa Indians, and in
19 cooperation with the Sac and Fox Tribe of Oklahoma,
20 and the Wyandotte Nation, respectfully request the
21 NAGPRA Review Committee to act positively on an
22 agreement concerning the disposition of human
23 remains and associated funerary objects determined
24 to be culturally unidentifiable in the possession
25 and the control of Central Michigan University's

1 Museum of Cultural and Natural History. The Saginaw
2 Chippewa Indian Tribe of Michigan is the disposition
3 designee and will perform all necessary NAGPRA
4 procedures with Central Michigan University's Museum
5 of Cultural and Natural History in the transference
6 of the collection and reburial, then the long
7 journey of our Anishnaabek ancestors will be
8 complete. And I thank you for your time.

9 COLIN KIPPEN: Thank you, Mr. Johnson, and thank
10 you also, Mr. Pretzer.

11 Committee members, do you have comments or
12 questions?

13 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

14 SONYA ATALAY: I actually want to just note for
15 the record that I am recusing myself in this case
16 because of my personal connection with the tribe and
17 the extensive and ongoing collaborative and
18 consultative work that I do with the tribe.

19 COLIN KIPPEN: Thank you.

20 ERIC HEMENWAY: I'd like to make a comment that
21 I also have to recuse myself from voting on this
22 matter, as for working with the tribe and the museum
23 on this case.

24 COLIN KIPPEN: Thank you. For those of us
25 remaining, do we have any questions?

1 AUDIENCE MEMBER: I have a question. Do you
2 three constitute a quorum?

3 COLIN KIPPEN: We do.

4 CARLA MATTIX: We don't have that requirement
5 currently.

6 COLIN KIPPEN: We don't have a quorum
7 requirement.

8 AUDIENCE MEMBER: That's right. You don't have
9 that.

10 COLIN KIPPEN: Right.

11 **REVIEW COMMITTEE MOTION**

12 DAN MONROE: The answer would have been yes in
13 any case. I move we approve the request.

14 ALAN GOODMAN: I second that.

15 COLIN KIPPEN: Is there any discussion? There
16 being no discussion, call for the question. All
17 those in favor say aye.

18 ALAN GOODMAN: Aye.

19 COLIN KIPPEN: Aye.

20 DAN MONROE: Aye.

21 COLIN KIPPEN: All opposed? The motion carries.

22 I wanted to thank you for your submission and
23 also for taking the - just taking the time to just a
24 little more generally to talk about what this case
25 involved. I think that the work that you've done is

1 really exemplary. It's again this idea of talking
2 with the tribal communities in a collaborative way
3 where you're really trying to find common ground and
4 ways to help to make these matters able to be
5 resolved. So I thank you for that.

6 I also just wanted to just take a minute. I've
7 been asking everyone else. I'm going to ask you.
8 What did you think of the process by which you
9 submitted the information to us? Did you find that
10 of any assistance, and did you - can you think of
11 any improvements that we might make to the process?

12 WILLIAM PRETZER: Well, I have been an employee
13 of museums for the last 30 years. Only upon coming
14 to Central Michigan three years ago did I become
15 involved in the NAGPRA process. So I am a neophyte
16 and I did not know the process before you had that
17 form. Frankly, I'm astonished anybody lived through
18 this process without that form. It does make it - I
19 mean, to go do any review process not knowing what
20 they are asking and what not only the criteria but
21 the rubric of proof is would be extremely difficult.
22 So I have to say that I found that form very easy to
23 use and very helpful.

24 COLIN KIPPEN: Committee members?

25 WILLIAM PRETZER: Thank you all.

1 COLIN KIPPEN: Thank you.

2 DAN MONROE: Thank you.

3 ALAN GOODMAN: Thank you.

4 COLIN KIPPEN: Mr. Tarler?

5 DAVID TARLER: Mr. Chairman, our next item on
6 the agenda deals with the proposed rule regarding
7 the disposition of unclaimed human remains, funerary
8 objects, sacred objects, or objects of cultural
9 patrimony discovered on Federal or tribal lands
10 after November 16th, 1990, and that rule will be
11 codified at 43 C.F.R. 10.7. Previously you had
12 received materials to aide in your comments today,
13 and you have an additional document at tab 9.

14 **COMMENTS FROM THE REVIEW COMMITTEE FOR THE DRAFTERS**
15 **OF A PROPOSED RULE REGARDING THE RULE TO BE CODIFIED**
16 **AT 43 C.F.R. 10.7**

17 COLIN KIPPEN: Mr. Tarler, could you help
18 summarize for the committee where we are in the rule
19 process and the steps that we have presently gone
20 through to get to where we are presently? I know
21 that it has been a rather involved process to date.
22 Could you provide an overview for us in terms of
23 where we are?

24 CARLA MATTIX: Where we are right now is you
25 have before you the summary - I think you'll recall

1 a couple of Review Committee meetings ago, I believe
2 in Phoenix, there was a facilitated discussion with
3 - if Sherry were here, she knows - Manuel Pino, and
4 he helped lead a discussion to try to start this
5 consultation process for this rule. As you will
6 recall, this is the provision under Section 3 of
7 NAGPRA. And Section 3 of NAGPRA is the section that
8 deals with inadvertent discoveries and planned
9 excavations. And once you go through the NAGPRA
10 process in that portion of the statute, if you
11 cannot - if the cultural items do not meet one of
12 the custody provisions in that section of the
13 statute, then you get to this area deemed unclaimed.
14 And in this particular portion of the statute, it
15 does say that Native American cultural items not
16 claimed under this section shall be disposed of in
17 accordance with regulations promulgated by the
18 Secretary in consultation with the Review Committee,
19 Native American groups, and representatives of
20 museums and the scientific community. So that is
21 the process that we're in right now.

22 And what you have in your materials is a
23 summary of that discussion from a couple meetings
24 ago, as well as the efforts of a Federal agency
25 working group that has been looking at this issue

1 and putting together some of their concepts on how a
2 rule might look, and I believe that's the material
3 you have in a draft behind tab 9.

4 COLIN KIPPEN: So in the normal course of
5 business, where would we - what are the procedural
6 steps that we must go through in order to now
7 finalize a recommendation? Where - exactly where
8 are we now in that process?

9 CARLA MATTIX: I think what we're looking for
10 from you is your review of the materials that have
11 been gathered thus far about the consultation
12 efforts on 10.7, any thoughts you might have on a
13 rule process, what a rule might look like.

14 SHERRY HUTT: If I might add, there have been
15 consultations on 10.7 since November of '05, and in
16 order to move this rule forward, sort of advance the
17 process, last year about mid-year we engaged a
18 contractor who has a great deal of experience in
19 rules, in fact she helped write NAGPRA. And we
20 engaged Patricia Zell to work with the National
21 NAGPRA Program in the compilation of 10.7, and then
22 we took it further and engaged a Federal agency work
23 group to give input. We're - as rulemaking goes,
24 you know, you talk about transparency, I don't think
25 we could be more transparent than this. The 10.7

1 rule would essentially be best practices for Federal
2 agencies in disposition on Federal and Indian land.
3 So the reason for involving the Fed agencies since
4 they're impacted is to really glean from them what
5 their vision of best practices might look like. And
6 so what you have behind tab 9 is their report, and
7 it's omitting the formal sections of a rule that
8 would come before and omitting the formal sections
9 after. You have the guts of the 10.7, and it's
10 offered to you only as a guide. You also have, that
11 Lesa prepared pursuant to your request, an executive
12 summary of all of the consultations that have
13 occurred with tribes and national science and museum
14 organizations.

15 So as you look at this, if you have thoughts,
16 it's really a summary, and if there are things in
17 what we've given you behind tab 9 that you - I mean,
18 just as a start, then if you like the sort of
19 verbiage that's there, then you might indicate that.
20 If you think it's - you know, whatever your thoughts
21 are as you go through.

22 Now, the summary was - the whole compilation of
23 data was sent to you on that CD because it's
24 voluminous, and that way you could search it and do
25 word searches and that sort of thing, so you could

1 manipulate it, and then you have the summary - the
2 head note that Lesa prepared. So what's behind tab
3 9, those couple pages, is really just sort of the
4 embryonic stage of what a rule might look like.
5 Just again, to assist, we're not presuming anything.

6 And then what I want to bring back to Patricia
7 Zell and to the workgroup are your thoughts, and
8 then what we would do over the course of this
9 summer, the program will come up with a - this is
10 ideally, come up with a proposed rule to give to
11 counsel. And if it's a simple rule that doesn't
12 require a lot of review, we might even publish it as
13 a proposed rule prior to the next Review Committee
14 meeting. It would have to be at least 30 days prior
15 to the next Review Committee meeting to give you a
16 chance to look at it, and that way you would be
17 meeting during the comment period on the proposed
18 rule. And again, you know, 30 days as a comment
19 period is hardly sufficient. It would be more like
20 90 days again, like we did with the CUI rule,
21 wanting maximum input.

22 This is a rule that has not attracted a lot of
23 attention. It is not one that seems to be
24 controversial, and the best way I've heard it
25 described by folks is the compilation of best

1 practices in Federal agencies: Would it be workable,
2 is it going to be attractive for folks?

3 And it was one of the three reserved sections
4 to the NAGPRA 10, to the 43 C.F.R. 10. We have
5 already promulgated the 10.13, the continuing
6 obligation to comply. The CUI rule is under review
7 at the Department, back with counsel, and then we
8 have this 10.7. So we're working our way through
9 the - what were the original reserved sections of
10 NAGPRA, cleaning that up before we get into the
11 project of going back to all the rules and wondering
12 if we have corrective language to others. So this
13 is the final reserved section that you are to - that
14 you would have to review as part of your Section 8
15 duties to advise the Secretary.

16 CARLA MATTIX: And the process is very similar,
17 for those of you that were either involved in it or
18 familiar with it, the process used to develop the
19 culturally unidentifiable rule, 10.11. It basically
20 mirrors that process.

21 COLIN KIPPEN: I'd like to ask the committee -
22 before I do that, I'd like to just summarize the
23 rules in front of us that have come to us and I
24 think their - I think their strength is in their
25 simplicity. The rule that we have before us I think

1 is very simply stated. I know that the audience
2 doesn't have it, but what it basically does is it
3 establishes what we mean when we say that something
4 is unclaimed. And so there's a section that begins
5 with unclaimed. And then there's a second section
6 which speaks about how we go about disposing of
7 unclaimed items with some criteria there. And then
8 finally there's a - actually we have two more
9 provisions. There's a notice of unclaimed cultural
10 items in the custody of a Federal agency, and that
11 lists a set of processes, and finally there's a
12 question of curation, care, and use of unclaimed
13 cultural items.

14 And I think this rule as it's presently
15 proposed - and this isn't a proposal yet, it's just
16 a draft of some of the issues - I think it captures
17 a lot of the conversation about - around this
18 particular rule, and there are a series of questions
19 that are embedded in the document. What I want to
20 do is ask the committee members how they would like
21 to precede in coming to some consensus on what we
22 think a rule should look like. I also want to ask
23 the committee to comment on some things that may not
24 be covered by this rule, which is I think the most
25 glaring example or the most glaring question in my

1 mind is to speak of best practices is wonderful but
2 my sense is I'm still not certain to what degree
3 Federal agencies are in compliance with NAGPRA.

4 We've had a preliminary report, which has been
5 presented to us. It was the work product of the
6 Makah Indian Tribe, and we all acknowledge that that
7 - it certainly wasn't done by the Government
8 Accountability Office but it was an attempt to
9 capture some data. And what was really striking
10 about that report is that the level of capacity and
11 the level of compliance with this unfunded mandate,
12 NAGPRA, amongst Federal agencies was very, very
13 uneven. We had Federal agencies that had a person
14 who was appointed. We had other Federal agencies
15 that didn't. So the mechanism by which Federal
16 agencies were complying with the present set of
17 rules to me is still an unknown question. And I
18 think that's sort of the - that is the context
19 within which this rule, whether we like it or not,
20 is going to be moved forward.

21 So I just have that comment in terms of what I
22 see in the rules. And I would like to hear from the
23 rest of the committee members as to what their
24 thoughts might be as to how we should proceed to go
25 forward to make a decision about making a

1 recommendation on the content of this rule.

2 Mr. Monroe.

3 DAN MONROE: I'll open up the discussion. I
4 think that there's a real value in having this draft
5 outline and it's extremely helpful. Obviously there
6 are a number of issues here that are fairly
7 complicated and warrant some further thought and
8 discussion in all of the sections I would say. For
9 example, should it be possible for other Indian
10 tribes to be allowed to claim otherwise unclaimed
11 human remains or objects if a tribe that has
12 purportedly cultural affiliation decides not to make
13 such a claim. Prima facie, I think one would say
14 no, but I'm not sure that that would encompass all
15 the possibilities that might arise. Likewise, there
16 are questions about tribes that are not federally
17 recognized and what if any access should they have
18 to the process.

19 My suggestion would be that we're not in any
20 rush that I know to complete this. It would be
21 perhaps valuable for the committee to either post up
22 at the next meeting, prior to the next meeting,
23 issues and concerns that we individually would like
24 to see addressed and discussed or else to break the
25 committee up into some subcommittees and ask

1 subcommittees to actually work on sections of this.
2 For my part, at least, I'm not prepared to dive into
3 a full-blown discussion today in any thoughtful way
4 on this, other than to say that it's valuable to
5 have it in hand and I appreciate it.

6 COLIN KIPPEN: Can I ask a procedural question?
7 I thank you for your comments. I want to ask staff
8 a procedural question. Is the proposed information
9 that is under tab 9, is that available to the
10 public? No.

11 SHERRY HUTT: No, it's a report to the Review
12 Committee.

13 COLIN KIPPEN: Just to the Review Committee.

14 SHERRY HUTT: I'll let counsel comment on the
15 rulemaking process, because we're operating within
16 the confines of certain rules here.

17 STEPHEN SIMPSON: Yeah, this is not even to the
18 stage of a draft rule.

19 COLIN KIPPEN: Right.

20 STEPHEN SIMPSON: And the rule does not become
21 public until it is actually proposed and published
22 in the Federal Register. The draft rule and this
23 sort of initial discussion of it is for the
24 committee's use and thought to just as you've
25 mentioned, to stimulate your discussion and to give

1 you a feel for where the Federal agency work group
2 is. But any draft rules are not - are not available
3 for public comment and they are predecisional.

4 SHERRY HUTT: Let me - if I might add, just so
5 that there's no mystery here. The work group had
6 what you have. They had the disk of all of the
7 consultation with tribes and science and museum
8 organizations, including the one that Manual Pino
9 did in Phoenix, was that in 2007, and the sessions
10 in 2005. And so they had that on the disk. They
11 also had the executive summary that was done that
12 you all have. So they have what you have. And in
13 coming to this they look through that to make sure
14 that those issues that were brought forth there are
15 represented in this two-page document. And where
16 you see that there are questions, they didn't
17 presume to answer those questions. They identified
18 that those were questions. And if you have thoughts
19 on those questions, that might be a place to look
20 at, plus any additional items that you might think -
21 I mean, look at it all, but it was done with an idea
22 of taking that executive summary one step further
23 into something that we might sort of work off of.

24 COLIN KIPPEN: So if I were to summarize, what
25 we've done is we've cast this big net where we've

1 invited people to come and speak to the NAGPRA
2 Review Committee about this rule process in 2005 and
3 again in 2007. We've got a working group together
4 that helped to distill all that information, and we
5 now have it. The difficulty is that we're
6 discussing it in a public meeting with interested
7 people in the audience without really that ability
8 to have an engaged conversation and it appears to me
9 that the - and I know this to be true, that the
10 rulemaking process is you don't go back out to the
11 community until you actually have a proposed rule.
12 So when we come up with a proposed rule, we then put
13 it out for the community to again give us more
14 feedback. Is that correct?

15 STEPHEN SIMPSON: Yes.

16 COLIN KIPPEN: And so I understand what's being
17 said, and it's - I'm - my recollection is that for
18 every sentence that is a question in front of us,
19 every sentence that is a question was the subject of
20 literally hours of testimony by various witnesses
21 who came before the committee when we were
22 discussing this. And you - we have a series of
23 questions that are being asked within the four
24 sections that I discussed, and they were long and
25 they were complicated, is my recollection.

1 I would like us to - I want to ask the
2 committee a question. I want to hear from you
3 first, though, Dan - I mean, Mr. Goodman, please. I
4 see you have a question.

5 ALAN GOODMAN: Well, I'm puzzling as well over
6 how to proceed, and I guess one comment to - or
7 rather an issue that's on my mind is really how
8 forward looking and pathway making this reg may end
9 up being and whether or not a small step is - might
10 be better than a big step. And for instance, to go
11 - what I'm speaking toward is following Dan is for
12 instance two questions, consider whether other
13 Indian tribes should be allowed to claim an
14 otherwise unclaimed object; consider whether
15 nonfederally recognized tribes with cultural ties to
16 an unclaimed object should be included in the
17 process. And there's a couple more, but just those
18 seemed to have some degree of legal precedent, and
19 please correct me if I'm wrong but it's a question
20 of whether or not those sorts of questions and
21 issues ought to be wrapped into this law, into this
22 regulation rather.

23 SHERRY HUTT: If I might, and I'm not responding
24 to the law, but in the - as part of the Review
25 Committee's function you advise the Secretary on

1 rules, and we've taken that in a very broad sense.
2 In other words, we ask you to give input on a rule
3 in its development and again when it's an actual
4 proposed rule. And so if the Review Committee has
5 thoughts, feelings, suggestions, what have you, then
6 we want to be sensitive to those. If there are
7 legal issues with regard to any of that, that's the
8 kind of thing that counsel would respond to in the
9 preamble of a rule and we'd work through it. But at
10 this preliminary state we're really saying what is
11 your guidance, what is the combination of your
12 thoughts.

13 When the unidentifiable rule came to you in the
14 - I mean, there were a couple times that this body
15 commented on what should be in that rule. Even
16 before it was a draft rule you had opinions and a
17 sense of things. This rule may be somewhat
18 sanguine. It's not a - it doesn't appear to be a
19 controversial rule and maybe thoughts jump to mind
20 and not and however you'd like to continue to think
21 about it is fine.

22 And maybe one thing about the - that particular
23 issues don't jump to mind is that Federal agencies
24 tend to be dealing with these things and we don't
25 have a groundswell of problems or issues. It's a

1 credit to the Federal agencies and the way they
2 happen to be handling things on the ground as they
3 see them, because if there were sort of a sense of
4 issues or problems, no doubt you would have heard it
5 and you'd be giving me that kind of feedback. So I
6 think we should start with the idea that while we
7 talk about Federal agency compliance that there's a
8 lot of work being done by the Federal agencies in
9 the first instance in consultation with tribes. And
10 part of the reason why this rule is coming to you in
11 2009 is to move it from the reserved section to
12 final, but there - but I would admit to you that
13 there was no push to get it done because there
14 didn't seem to be controversy and problems and
15 things that had to be addressed.

16 So we're really looking at your wisdom and
17 things at this, because when a Federal agency has an
18 excavation and they've tried to deal with things
19 with tribes, what's left over, what do they do, is
20 there an ability for access for use and study, is
21 there somewhere else they should go beyond those
22 tribes that they've consulted with, and what is the
23 duty of care over what period of time. And so these
24 are issues that you might legitimately address. Now
25 if legal issues pop up in all of that, we'll -

1 that's where counsel's homework begins.

2 So if you have thoughts, fine. If you have
3 them at some future time, I mean that's fine. But
4 we're trying to receive as much feedback as we can
5 into the drafting of this. And the working group
6 had the same issues that you now face, and that is
7 what's the need, what are the issues, does this
8 accurately sort of look at the universe of what it
9 should have.

10 STEPHEN SIMPSON: And, Mr. Goodman, I'd like to
11 mention that just if you have - if the committee has
12 legal issues that they would like for counsel to
13 consider during the course of drafting this rule and
14 reviewing this rule, we'd be happy to hear those as
15 well. Please go ahead and include those in your
16 recommendations or your thoughts on this rule, and
17 we will take a look at them and consider them.

18 COLIN KIPPEN: My sense in reading the materials
19 and my recollection of the hearings that I was
20 involved with was that actually there was
21 considerable - there were considerable issues to
22 address here. And my sense is that the committee is
23 not ready to move this issue forward at this time.
24 I think that there's a need for perhaps a little
25 more structure in the process. I'm really not sure

1 what that process should become, but I think we need
2 to have a way of making sure that each time we look
3 at this we accomplish something so that we can
4 eventually end up with a final rule, but I don't
5 sense that we have that now.

6 I have the sense that we have now a lot of
7 information without a system by which we're going to
8 go through and parse each of the sections. For
9 example, what does it mean for a cultural item to be
10 unclaimed? There are points in this memo to us that
11 summarize some of those issues, but each of them
12 themselves are difficult and make - and we've heard
13 a lot of different testimony about that. Same with
14 what are the disposition practices that we should be
15 codifying here or putting into administrative
16 regulation? They are also varied. I'm not certain
17 that this committee is ready - in fact, I am certain
18 we're not ready to move forward at this time. But I
19 would like some suggestions from the committee in
20 terms of how we could organize ourselves to maybe
21 begin to discuss these matters in a more productive
22 way so that we can give you the guidance you need.
23 So I'm open for suggestions.

24 DAN MONROE: To keep the process as simple as
25 possible, I think it'd be valuable for members of

1 the committee to consider these questions and others
2 that may not be identified in this work between now
3 and the next committee meeting and to forward to the
4 Chair for distribution to other committee members
5 and to the program, those questions that would seem
6 to require some time on the part of the committee
7 for discussion and review. I think that prima facie
8 this may not be so complicated or appear to be so
9 complicated but I'm certain that there are actually
10 some pretty dicey issues involved in this one. And
11 it would seem to me that then the Chair could work
12 with the program to organize a method by which at
13 the next Review Committee meeting we have a more
14 structured discussion based on input from all the
15 committee members that will enable us to move this
16 forward.

17 COLIN KIPPEN: I think that's a good suggestion.
18 Is there - would anyone like to assist me in that
19 work? And again, I think what we would be doing is
20 we would be capturing issues. We would be capturing
21 - and it appears on its face that the format that
22 has been adopted here is a good format. I think
23 those are the - I think that the headings are good
24 formats that we could begin to use as a way to parse
25 through what are the issues. And if there's - are

1 any that we think - and we could maybe even ask the
2 question which are most important. We might try to
3 prioritize them. We also might try to see which
4 ones are missing if there are any. And then bring
5 it back in that form.

6 I think the other thing that may well happen is
7 that any work we do in this regard to just pull it
8 together will assist us in being able to come up
9 with a rule that is succinct and will be much easier
10 to draft from. I can tell you that drafting from
11 something that appears like this, that answers these
12 questions, because there are a series of questions
13 that don't have answers, they just have questions,
14 to be able to understand whether that's a question
15 that we need to get to an answer about and then form
16 an answer would be much easier for us to turn into a
17 regulation. And we would then be ready to receive
18 whatever comments come back from the community about
19 that since we have - we can better understand how to
20 answer.

21 The question, for example, II.A., it says,
22 consider whether other Indian tribes should be
23 allowed to claim an otherwise unclaimed object. You
24 know, we haven't - there are a number of ways that
25 we could handle that but I think first we need to

1 understand what the issues are, prioritize them, and
2 then begin to try to answer that. So I'd be happy
3 to work with a group if anyone wants to assist me in
4 that, I would welcome your assistance. And I
5 probably could use someone to just be able to just
6 send emails to or we could work as a committee as a
7 whole. I could send all of you the - whatever it is
8 we're developing.

9 DAN MONROE: I think procedurally we have to
10 provide input and then you can work with the program
11 and then all of the collected information, ideas,
12 questions and suggestions that we have would be put
13 into the packet for discussion, public review and
14 discussion at the next meeting -

15 COLIN KIPPEN: So then my understanding is that
16 you would provide to me, each of you would just read
17 through this list -

18 DAN MONROE: Right.

19 COLIN KIPPEN: - and I would ask the staff,
20 could we have this in an electronic copy so that
21 each of the members themselves could -

22 SHERRY HUTT: This document?

23 DAN MONROE: Right.

24 COLIN KIPPEN: - yes, so that each of them can
25 simply reorganize that information as they see fit.

1 We can have a master copy and we can then work off
2 of that and you could provide the comments to me and
3 I'll forward them to you. And then we can come up
4 with another summary of our review of this rule.

5 DAN MONROE: Right.

6 COLIN KIPPEN: All right. Is that - is that
7 understandable? It's doable?

8 SHERRY HUTT: Well, that will work. That's very
9 workable.

10 COLIN KIPPEN: Okay. Then in that case we will
11 defer this matter to the next committee meeting to
12 receive a summary about the work that we're going to
13 do.

14 Mr. Tarler, I believe we're ahead of schedule
15 again.

16 DAVID TARLER: We are about on schedule,
17 Mr. Chairman.

18 COLIN KIPPEN: Oh, we're on schedule. All
19 right.

20 DAVID TARLER: At this time, we will present the
21 National NAGPRA Program manager's mid-year report on
22 the implementation of NAGPRA and the National NAGPRA
23 Program law enforcement investigator's report on
24 NAGPRA civil enforcement, Sherry Hutt and Bob
25 Palmer.

1 SHERRY HUTT: And it's under tab - the mid-year
2 report is under tab 8.

3 DAVID TARLER: Eight is correct.

4 **NATIONAL NAGPRA PROGRAM MANAGER'S MID-YEAR REPORT ON**
5 **THE IMPLEMENTATION OF NAGPRA (FY2009)**
6 **PRESENTATION - SHERRY HUTT**

7 SHERRY HUTT: Good afternoon again. The report
8 under tab 8 is the mid-year report, and as we have
9 been in the practice of doing, we have given you
10 either the mid-year or the end-of-the-year report in
11 draft for you to look at and comment upon before we
12 actually put it in final and put the page numbers in
13 it and put it up on the web. But before I go into
14 the report, I'd like to deviate just a bit. When we
15 think of a NAGPRA Program, what I have been giving
16 you each time mid year and end of the year is what
17 the National NAGPRA Program has been doing, and I
18 will do that, you know, the statistics, what we do
19 operationally and seek any comments or suggestions
20 or thoughts that you have and your guidance on that
21 and you've given us homework assignments in the past
22 and they've been good. So we've enjoyed doing
23 those.

24 But before I go into that I just want to
25 comment on issues in NAGPRA nationally because we as

1 the National NAGPRA Program speak on a constant
2 basis with people from museums, from tribes, and
3 from Federal agencies, and the public. We receive
4 hundreds of phone calls a month into the office that
5 people respond to and different requests for
6 technical information. And there are certain
7 threads. And as you prepare your report to
8 Congress, you're looking at trends and you're
9 looking at impediments to the process. And so I'd
10 like to just start out by giving you - it's a rather
11 short list but some things that we see from the
12 national perspective in the program just for your
13 input, and then I'll go into sort of the program
14 achievements.

15 And the items that we see are this - and I
16 should say that we get - we do outreach in the
17 program. We seek to work with programs that deal
18 with NAGPRA and the things that we hear are: Are all
19 human remains in inventories? Have all those
20 museums and Federal agencies included in the
21 inventories all of the human remains in their
22 possession? Are there human remains in possession
23 that they exempt because they question certain
24 things, like whether they control or whether they
25 have them on 50-year loan from whatever, but

1 different issues?

2 So the first - if what NAGPRA is all about is
3 resolving matters of cultural property and if some
4 of those are most basically human remains, then the
5 way we give disclosure in NAGPRA is inventory, so
6 are all human remains in inventories? And of
7 course, the National NAGPRA Program does not audit
8 collections. It's not part of our statutory
9 function. It's not what we're set up to do, and
10 we're not seeking to do it. But if you're
11 commenting on issues that would certainly be one.

12 And then secondly, and this one we can deal
13 with, are all those in the culturally affiliated -
14 human remains in the culturally affiliated
15 inventories are they in notices. You know as the
16 law is that within 180 days of the inventory, within
17 six months of the inventory the human remains that
18 are culturally affiliated should be in a notice. It
19 is the notice that establishes the rights of tribes
20 to make requests for those individuals. So any
21 human remains that have been determined to be Native
22 American and have a tribe should be in a notice. We
23 had a study that is on our website by Katherine Maas
24 of human remains in - Native American human remains
25 in culturally affiliated inventories not yet in

1 notices. And she went through our electronic
2 database and she found two things. First, and most
3 critically, she found that there were over a
4 thousand individuals already culturally affiliated
5 in inventories, so the decisions have been made but
6 they're not yet represented in a notice. And we put
7 that up on the website. This was - it was Federal
8 agencies collections, we put that up on the website
9 and we've gotten a response from a couple of the
10 Federal agencies. For instance, BLM had just a few
11 and they took it very seriously and reviewed these,
12 and determined that it may be double counting, that
13 they may be in a notice and then they're also listed
14 somewhere in an inventory and in fact these
15 individuals may be in a notice and they're looking
16 very seriously at sort of looking at the data and
17 cleaning that up. We have another Federal agency,
18 the TBA, which is a quasi somewhat Federal agency,
19 and they've never published a notice. And they have
20 a good many human remains, some of which have been
21 culturally affiliated and no notices have been
22 published. They now have two people, really good
23 competent people that they've assigned - whom
24 they've assigned to make NAGPRA a priority and get
25 to work on it. So it would be nice to see over the

1 months when we get to the next Review Committee
2 meeting if we have some progress there, but they're
3 making a - I believe they're making a sincere effort
4 to address this long-standing issue. So that
5 report, which was completed in the program in a
6 partnership with the George Washington School Museum
7 Studies Program, is up on the website and has had an
8 impact.

9 The other thing that the researcher determined
10 was that not all of the paper data is in our
11 electronic files. There's a period from about '97,
12 '98 to 2000 where matters that came in are not
13 necessarily in our paper - in our electronic files.
14 So we now have someone working with us to basically
15 get everything from the paper files into the
16 electronic files under the direction of Mariah
17 Soriano, and so we would then be able to rerun the
18 culturally affiliated not in notices, but do so on a
19 fully populated database and have more information.
20 So we may have more than a thousand individuals who
21 are eligible for notices and not in any notice, but
22 that's the kind of work that we in the program can
23 provide to facilitate the process, so we see that as
24 an issue.

25 The third item is the other inventory. Are

1 there culturally unidentifiable listings that could
2 be affiliated? That is, were they the result of -
3 are they put on that list not having done
4 consultation? Were they put on that list using a
5 higher standard than the reasonable standard in the
6 law? And we also had a study done of those. They
7 went - a graduate anthropology student from Mary
8 Washington, also where we obtained Lauren Trice,
9 we've had very good luck with some of these
10 students, fabulous people - and he found that about
11 80 percent of those listed on the CUI database could
12 be identified as to geographic location and as to
13 time depth and had from 50 to 2,000 objects of
14 material culture in context with the individuals.
15 And his faculty were somewhat astounded that they
16 were on the CUI list. So there's an area, if you're
17 looking for an area for attention that people might
18 go back to.

19 We all - when we work with Federal agencies and
20 museums, we always say that your first homework
21 assignment is to get those culturally affiliated
22 into notices, and then your next homework assignment
23 is to go back and look at that CUI list and see if
24 all of those individuals are in fact unidentifiable,
25 because we receive amended inventories on a regular

1 basis where they're moved from unidentifiable to
2 culturally affiliated. So that would be an issue
3 that we see on a large scale. If you were to bring
4 into notices all of those where decisions have
5 already been made and bring into cultural
6 affiliation and then into notices those where you
7 reasonably could based on the data that is now seen
8 there's about 100,000 individuals in collections
9 today that could be brought into a notice and into
10 the process. Because we have 40,000 individuals -
11 almost 40,000 individuals so far who are represented
12 in notices. We have 130,000 on the CUI list. So if
13 you bring into notices the rest of those in
14 affiliated inventories and you reduce the CUI list -
15 I mean there are some on the CUI list where there's
16 just too little data but you're looking at a target
17 of about - a reasonable target of about 100,000 that
18 we could through giving information, giving
19 training, working with people, giving technical
20 information that we could reduce that. That in our
21 program, in the National NAGPRA Program, those are
22 our goals is to reach out and do that kind of
23 training and technical assistance to move things
24 forward.

25 Another issue that we find is while there have

1 been about a million funerary objects in notices
2 with regard to 40,000 individuals, many times tribes
3 say why do our ancestors have no material culture,
4 why do the bones have no objects. And so that's an
5 issue that we hear repeatedly, and that's not one
6 that we have dealt with in the program. That's not
7 one that I'm certain what the next action step is on
8 that, but that's certainly a concern that we hear
9 quite a bit.

10 Another issue that we hear is - and I talked
11 about this this morning a bit when we were talking
12 about grants, and that is NAGPRA programs in tribes
13 and in museums, for that matter, are not funded so
14 it's very frustrating. We hear some frustration
15 from museums, we hear a lot of frustration from
16 tribes, as to THPO programs that have some funding,
17 albeit inadequate, but no funding for NAGPRA offices
18 and no grants programs set up for that. And that's
19 - if you're looking at capacity and impediments to
20 tribes moving forward that's one that they struggle
21 with.

22 Another issue that we hear is that despite all
23 the training that we've done, there's a call for
24 more training. And that's why we feel that these
25 webinars and we hope that the disks from the videos

1 will help. And we do do outreach on training, and
2 we seek your guidance on this as well. In the last
3 year, we reached out to some and we did training.
4 We reached out to NATHPO and USET and AAM and
5 offered to do training and all, and we weren't
6 successful in getting on their conference schedules.
7 And we will reach out again. We're certainly
8 persistent if we are anything. But if there are
9 other areas or other ways that we could be reaching
10 out to offer training and to partner, we're
11 certainly pleased to do so.

12 We had one - you talked about cooperative
13 agreements this morning. We did, of course, have a
14 cooperative agreement with NATHPO in 2007 for one
15 particular training, and I think with your help -
16 perhaps you help, Chairman, we concluded that
17 documentation in March of this year.

18 So we also find that the grants program, and I
19 mentioned this morning but to recap it as part of
20 this report, there were over 5 million dollars'
21 worth of projects identified, 4.2 million in grants
22 requests, and slightly less than 2 million will be
23 funded as part of the grants money. So that's
24 another issue.

25 The next issue that comes up is the Ninth

1 Circuit's decision in Bonnichsen versus the United
2 States known by some as the Kennewick Man case, and
3 the - and I'm not going into the legal issues of the
4 case but the implication in terms of tribe and
5 agency and museum relationships in the Ninth Circuit
6 is that if a museum or Federal agency determines
7 that these human remains are unidentifiable then
8 they put those on an unidentifiable inventory and we
9 put them up on the website to foster consultation.
10 If however they say because they're unidentifiable
11 they're not Native Americans, then they don't put
12 them on an inventory at all and then they're just in
13 a void. And so resolving that or dealing with that,
14 now how many human remains are subject to that limbo
15 because of that or how many tribes - how many
16 museums or Federal agencies in the Ninth Circuit are
17 holding individuals off of inventory for that, we
18 don't have a sense of that. That would require some
19 study that goes beyond our program. But we do - you
20 know, we hear that enough and from museums and
21 Federal agencies occasionally that believe that they
22 should not be on an inventory. So this is a - the
23 issue is there. The scope of the issue is what I
24 don't have for you.

25 And then the other issue that we hear is the

1 culturally unidentifiable rule, 43 C.F.R. 10.11,
2 when is it going to happen? And that is, of course,
3 something that we moved forward to the end of the
4 last administration. We ran out of time in the last
5 administration to get it promulgated as a final rule
6 and, I mean, they were interested. The
7 administration was concerned and interested. And
8 now we have in place, as of the last few weeks, a
9 new administration and we hope to bring this through
10 for their review and see where we are. But that's
11 been a rule that has had a great deal of interest
12 and a lot of input and I noticed that your former
13 Chair Rosita Worl, one of her goals - one of her
14 NAGPRA life goals was to see that rule published.
15 And so we take all of that very seriously, and
16 that's something that we're following up. So those
17 are - those are issues that we see on sort of a
18 bigger scope, on sort of a bigger-grained analysis.

19 Looking at the program itself, and not to
20 repeat things, you have the mid-year report, but I
21 just want to highlight some pieces for you. And
22 there's lots of lovely highlights. One of them is
23 the notices, thus - keep in mind this report is as
24 of March 31, 2009, and as of that point there had
25 been 110 notices published thus far this year, and

1 since that time I can tell you we've done now 140.
2 So Jaime Lavallee, who is the notice department of
3 one, was able to see 180 notices published last year
4 is up to 140 so far this year, so she's on target.
5 And it's not just that Jaime's hard work, and she
6 does work very, very hard, but notices are a
7 reflection of all of the hard work of tribes working
8 with museums and their hard work and the Federal
9 agencies to bring the inventories, the Notices of
10 Inventory Completion and to focus on items for
11 repatriation. So it's a real barometer of the
12 report - of the efforts of the - efforts we made.

13 And I would draw your attention to the tables.
14 If you look at the mid-year report, and by the way I
15 know that not everybody here has this but if this
16 looks good to you one of the first things we'll do
17 next week is move this up onto the website. So much
18 is available on our website. I encourage people to
19 - I know there are some folks that check our website
20 on a very regular basis but there's a lot there.

21 If you look at page 14 and 15 of the draft
22 report you'll see Notices of Intended Disposition by
23 year, how many have been submitted and how many
24 individuals have been impacted, so that there have
25 been 427 Notices of Intended Disposition. I don't

1 know that we have all of these. We asked Federal
2 agencies to send us in the data. Do we have all the
3 data, that's something that we're constantly trying
4 to capture. And then the other one is notice
5 publication by fiscal year, and you had asked
6 questions in prior meetings about how many were
7 published in any given year, and you can see that
8 there was a high point of notice publication. There
9 were a few moving along, and then in 2001, 2002 you
10 had a good many notices published. There was
11 actually I think a task force, some special funds
12 from Congress to get notices published, and the
13 program at that point hired people just to come in
14 and move those notices and they did. And then right
15 after that it dropped back down again. We're now
16 back up to the 180 for '08 and just in the first six
17 months of '09, 110. So it's - we're moving back up
18 again. The activity is there. And I'd like to
19 think the integrity of the notice process and the
20 way notices are being handled encourages people to
21 move to notices.

22 You've heard - I'm not going to repeat the
23 grants. You've heard the presentation of Sangita
24 Chari, and we're real pleased with the way the
25 grants are going.

1 The other new person in our office, Mariah
2 Soriano, is working as I said with a contractor, but
3 developing capacity means that she can run reports
4 for you. So if when you're thinking NAGPRA thoughts
5 and you think that we should be able to run reports
6 and produce data to illuminate the process and to
7 move the process forward, and you don't see that
8 we've done that, by all means, that's the kind of
9 feedback we would like because either she can run
10 those reports or we have this wonderful opportunity
11 while we have this contractor to build the capacity
12 within our system to be able to produce those
13 reports. So that's what we see our sort of benefit
14 to the process and the program is getting the data
15 out there in manageable ways.

16 As to training, we talked about the new grants
17 training, and in September we will also have a
18 training in Chicago on determining cultural
19 affiliation and we talked about the webinar and the
20 video, and we did the little training - little,
21 small in number but not small in impact, I hope, and
22 that is the training we did for you, the Review
23 Committee, on Friday night after the eight hours of
24 day training many of you sat through for the two
25 hours in the evening to go through the training

1 particular to the Review Committee on FACA and the
2 rules pertaining to your jobs as Review Committee
3 members. I hope that we can repeat that every so
4 often for the benefit of new members and for
5 refreshers for all of you.

6 The civil penalties is another issue that - and
7 Bob will speak to the actual - some of these actual
8 issues but Bob Palmer comes to us as an investigator
9 by the good graces of the Park Service Law
10 Enforcement Investigative Branch. That's not a
11 permanent position. Every year I go hand in hat -
12 hat in hand - I go begging, and ask the Law
13 Enforcement Division to keep this up and we do this
14 on a year-to-year basis. Bob gives us part-time,
15 and when he's on furlough from the park that's when
16 the NAGPRA civil penalties investigations torque up
17 and he tries to accomplish a year's worth of work in
18 a couple of months. So this is not something that
19 is permanent. It is a year-to-year basis and that
20 troubles me. Not only have we had high-quality,
21 wonderful work from Bob and he's such a good team
22 member with David, but we don't have permanency or
23 certainty in that, and if we didn't have that I
24 would have to step back and think how we would
25 investigate the civil penalties.

1 And while museums are not pleased to have
2 someone show up at their doorstep to investigate a
3 civil penalty, I've yet to have a conversation with
4 a museum that did not reflect on the professionalism
5 in the way that Bob handled the investigation.
6 These are not witch hunts. These are, gee, we've
7 got a problem, how can we fix it, and that's the
8 focus and coincidentally we'll resolve this issue of
9 the civil penalty and if there is a penalty and
10 payment. And the payments, when there is a penalty
11 issued by the Secretary, a financial judgment issued
12 by the Secretary those checks tend to come in in
13 return mail. So that is because the museums, I
14 think in going through it, again not pleased to have
15 to go through it but they respect the process and
16 they must feel it's fair or they would not be
17 sending the checks back. And we - the mitigation
18 amounts are again a reflection of bringing the
19 museums into compliance, that's the first criteria,
20 more so than seeking higher penalties.

21 The other issue is the Review - with regard to
22 the Review Committee and getting a new member
23 appointed, it was a bit frustrating taking 90 days
24 to work through the process but certainly the people
25 at the Department were wonderful. It was really a

1 matter of getting people appointed and into spots
2 and this was the first appointment made by the new
3 administration, so they were developing protocols
4 and systems within and were wonderful to work with.
5 So we had the opportunity to talk about NAGPRA and
6 the NAGPRA Review Committee with folks all the way
7 up through the Secretary's office and the White
8 House and the White House liaison. So you're - what
9 you do is known to all, and I have to tell you that
10 at each step along the way, Assistant Secretary,
11 Secretary's Office, White House, they're so now
12 interested in the NAGPRA process, they kept asking
13 us if you're going to meet in DC because they'd like
14 to see you all in person.

15 So when you're - one thing I hope you'll do
16 before you adjourn today is decide where your next
17 meeting will be. The very next meeting will be in
18 Sarasota at the Hyatt Sarasota, and when you look at
19 that flyer, by the way, the blue awnings that you
20 see that look out on the marina, that's the training
21 room. So focusing on training might be a little
22 difficult. When you go outside the other side of
23 the hotel, you walk across to the art center and in
24 the art center's room on stage is where the Review
25 Committee meeting will actually be, so you walk

1 across sort of a garden area to the Review Committee
2 meeting. So that's where your meeting will be in
3 October of '09, but when you decide - when you're
4 thinking of where to meet in the spring of '10, I
5 would ask that you would consider DC so that these
6 folks now who have heard all about you and are
7 anxious to see you in action would actually have the
8 opportunity to do so.

9 And I've spoken - we talked about the regs,
10 10.7 and 10.11. So I think unless you have
11 questions that concludes my report. Have I left
12 anything out, folks? Just Bob and we'll get to Bob.
13 All right. Thank you. Thank you for - and if I
14 don't get to say before you leave, all of your
15 efforts in reading those 14 inches of materials is
16 very much appreciated.

17 DAN MONROE: Mr. Chairman?

18 COLIN KIPPEN: Yes.

19 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

20 DAN MONROE: Thank you, Sherry, that's really
21 great work. I have a couple of questions regarding
22 the larger issues you mentioned and one of them
23 pertains to the number of human remains that have
24 been categorized or classified as unidentified and
25 the research that you had done that indicated that

1 perhaps 80 percent of those could be, within the
2 context of the law, recategorized as actually
3 affiliated. Could you just explain a little bit
4 more in detail how that research was done and what
5 possible remedies we might consider?

6 SHERRY HUTT: Yes, of the full number, which at
7 that time was a little less than a hundred and
8 thirty, with more information, more inventories
9 coming in, more tend to be unidentifiable. In fact
10 we've had inventories come in that take individuals
11 not yet repatriated off of affiliated and into
12 unidentifiable. But what Andrew Kline did was he
13 looked at a map of the U.S. that had been previously
14 done by a staff member that looked at culturally
15 affiliated versus unidentifiable, and some states
16 had just a few unidentifiable and most of them
17 affiliated, such as Arizona where there were
18 predominantly affiliated and very few
19 unidentifiable. And then looked at those states
20 that seemed to have the predominant number,
21 thousands, maybe 11,000 of CUI and maybe 2
22 culturally affiliated from sites in that state, and
23 the 2 that were culturally affiliated were in a
24 museum outside of that state. So there was a swath
25 along the Mississippi River Valley going through

1 Iowa, Kentucky -

2 ALAN GOODMAN: Kentucky, Tennessee, Indiana.

3 SHERRY HUTT: - Ohio, running down through and
4 into Florida. So there were eight or nine states in
5 a - contiguous states running down the Midwest, and
6 of those eight or nine states were more than 50
7 percent of all the CUI. So he took just those
8 states and then he went through the CUI in those
9 states and looked at all of the inventories one by
10 one for information as to those individuals. So
11 roughly half those were part of the - you know, he
12 selected his study by virtue of that.

13 And he queried the data in a number of ways.
14 He asked were these old, old remains like Kennewick?
15 Were they more than 10,000 years old? And he found
16 that about 80 percent of them were Historic as
17 determined by those who exhumed them. Then he
18 queried the data as to the method of the exhumation,
19 were they unknown, that is the sort of literal
20 orphans in the collection, skeletal remains in a box
21 that said "Indian" on it, and he found that 80
22 percent of them were excavated by archaeologists.
23 And he looked at when they were excavated because he
24 was looking at the fact that archaeological
25 technique has advanced over the years. And he found

1 that most of them, 80 percent of them, were
2 excavated by archaeologists late 1960s, '70s, to the
3 present, when archaeological techniques were
4 arguably much better than they would have been early
5 in the century.

6 Then he looked at them to determine whether
7 they were found in random, such that there wasn't
8 much context, and he determined - and it's
9 interesting, this 80 percent number. It was like 78
10 to 82, but it was in that realm for each of these.
11 That they were with 50 to 2,000 objects of material
12 culture, so he did a data chart. And then he looked
13 at it to see whether they were in museums that were
14 not close to the place of the exhumation, in other
15 words that they may have been a random excavation by
16 a field school from a state many states away that
17 might not have had as much particular - where the
18 faculty may not have had as much particularized
19 knowledge in that particular culture as local
20 faculty might who routinely work in those cultures.
21 And he found again that with very few exceptions
22 they were from the areas in which they are currently
23 housed.

24 So given all of that data, you know, given all
25 of those responses, he looked at that and it

1 appeared that just based - and he was working only
2 with the data on the CUI database, which is only a
3 thumbnail of what's in the inventory, and the
4 inventory is just a summary of what's in the actual
5 records of the possessing institution. And on that
6 alone, he wondered why 80 percent of them could not
7 be identified under NAGPRA as to the culture, the
8 people group culture, and from that we conclude
9 that, you know, we question whether consultation has
10 occurred and whether the right standards for
11 decision making are being applied. And so that's
12 why we suggest that those who have large numbers of
13 CUI question whether or not they should be doing
14 consultation and looking at their standards again.
15 Of course, we're always - when we ever have the
16 opportunity to talk to one of those institutions, we
17 encourage the grant process to work in consultation.

18 DAN MONROE: Personally, I think that's a very
19 serious problem. The data that you presented
20 indicate that there's fundamentally a material
21 failure in terms of implementation of the law and
22 the intent of the law. And so the question I would
23 like to put on the table is what forms of
24 remediation might we consider aside from simply
25 encouraging institutions that have data that would

1 support the - at least prima facie conclusion that
2 there hasn't been adequate consultation or that
3 there was not adequate attention given to the
4 information. I mean, it's very hard to imagine that
5 most of these remains came from excavations that
6 were conducted between the '60s and the '90s, and
7 regardless of whether or not they were excavations
8 that were done by students or as a part of a
9 graduate program in another state, the fact is
10 that's not - that's not that complicated to at least
11 make some estimate based on NAGPRA standards as to
12 cultural affiliation or possible or probable
13 cultural affiliation. So I'd like to open it up for
14 questions because I think it's a very, very serious
15 issue.

16 SONYA ATALAY: To begin with, is there a way
17 that we could get a copy of the report that you're
18 talking about -

19 SHERRY HUTT: Yes, it's on the website.

20 SONYA ATALAY: Okay.

21 SHERRY HUTT: And you would go - and for all
22 those that are here, the website is
23 www.nps.gov/history/nagpra, and you get to the
24 website and you look down the right-hand column,
25 then you look at Review Committee, when you go to

1 Review Committee you click on reports to Review
2 Committee, and that's where you'll see these listed.
3 And it's the "Who are the culturally
4 unidentifiable?" That's the title of that report.

5 COLIN KIPPEN: Are there any other questions or
6 comments?

7 ERIC HEMENWAY: I'd like to make a comment about
8 the training, it didn't report the training session
9 I've attended. And just a suggestion that I like to
10 see it as a tribal repatriation person who's doing
11 like the grunt work in the trenches on a daily basis
12 and it's kind of weird now to interact in this
13 capacity with the NAGPRA Program than before because
14 I'm usually badgering them all the time about
15 questions and procedures. But I would like to see
16 personally at a session, it wouldn't even have to be
17 a full day, maybe just even an afternoon or a
18 morning, to bring in someone from a tribal community
19 who does repatriations and someone from a museum
20 community who has performed successful repatriations
21 and bring them in and just have them available for
22 any other staff that attends these training
23 sessions. And that way these would be the people
24 who I think they could relate to much easier. They
25 would feel more comfortable asking them questions

1 then say from the staff of the NAGPRA Program or
2 these other individuals, because they - it can be
3 kind of intimidating your first meeting. You just
4 come in here and see how this happened, but if they
5 see somebody else that did the same job as they did,
6 you know, that's had success with it, I think they
7 would be more apt to approach them and get these
8 like little tidbits of advice that they might not
9 get from other individuals.

10 SHERRY HUTT: Advice from the field on working
11 through the process.

12 ERIC HEMENWAY: And just simple things, just
13 because I'm really inquisitive I'm always asking and
14 some people aren't that inquisitive and they need a
15 little nudge. And to get out to these groups that
16 aren't the target groups as much, like these smaller
17 tribes, these smaller museums, and of all the
18 dispositions I've had success with, most of them
19 have been with smaller museums and these are the
20 groups that are really ready to go. And there was
21 one museum I contacted and I said, well, I know you
22 have this skull, and he goes, well, do you want me
23 to Fed Ex it to you? And I'm like, well, I like the
24 enthusiasm but there's a process we have to go
25 through, so don't send the skull to my office. But

1 it's that type of enthusiasm that I think we need to
2 tap into with these smaller institutions and they
3 just might not have the information available, they
4 might not know. If we can somehow reach out to them
5 and then get them involved more I think that would
6 be a positive thing.

7 SONYA ATALAY: In terms of - I'd like to go back
8 for a minute to the issue that Mr. Monroe raised and
9 that Ms. Hutt was talking about in terms of the
10 CUIs. And that is just to state briefly, I've had
11 direct experience with this issue and I've heard
12 directly from others about this issue and I'm not in
13 any way intending to imply that all museums who have
14 CUIs are following this pattern. But the experience
15 that I've had in several circumstances and heard
16 others discuss is that this issue of CUIs is being
17 used and able to be used as a loophole, and that's
18 the language that is used, to get through the NAGPRA
19 process, past the NAGPRA process, around the NAGPRA
20 process. And that's very troubling and very
21 frustrating for those who work on these issues and
22 know that remains are able to be identified but are
23 very clearly not being identified because they're
24 certainly in this kind of limbo of CUIs. And I
25 think that's something that the committee can - I'm

1 not sure what could be done but I'm very interested
2 in doing the work to try to sort that out and move
3 that issue forward. I think it's very important to
4 do so, particularly with the research that you're
5 stating.

6 DAN MONROE: I would just add that on behalf of
7 museums that the majority, I think, of museums have
8 taken their responsibilities seriously and have made
9 the investment that's required in order to try to
10 determine cultural affiliation. And so it's a
11 problem from the standpoint of upholding the
12 standards that most museums believe in and have
13 applied when we have institutions that apparently
14 are not operating by the same standards. So
15 regardless of which way you look at this issue,
16 either from the standpoint of museums upholding high
17 standards and the - not just the letter but also the
18 spirit of the law, and also from the standpoint of
19 tribes, this is, I think, again a very, very serious
20 problem. My question is what kinds of action could
21 we potentially take to begin to address this, other
22 than simply in the course of conversations that may
23 or may not exist or take place, suggesting that it
24 might be a good idea for institutions that fall into
25 this category to do some consultation.

1 SHERRY HUTT: Would you want a more fine-grained
2 study that produced names on a page? Would you want
3 - I don't - you know, if you had some thoughts as to
4 more data or ways that we might present the data
5 that might be more illuminating.

6 DAN MONROE: I think it would be - go ahead.

7 ALAN GOODMAN: Yeah, may I respond? The answer
8 for me is yes, and I don't know, you know, how fine-
9 grained as in names on a page, but Andrew's category
10 - as I understand - I don't know if it's possible to
11 get a more complete sample but I do think there are
12 additional questions to be answered and, you know,
13 to break down categories a little bit more. It
14 would be nice to know not just state-level data but
15 some of the major institutions holding CUIs, and as
16 you sort of stated with the example of one state, I
17 believe, 11,000 CUIs and 2 culturally identified,
18 you know, is that true of particular institutions,
19 for instance. And in that sense, I would say, yes,
20 let's name names.

21 SONYA ATALAY: And perhaps part of that could be
22 just looking - something I've tried and started to
23 do myself, and I'm happy to share that data that I
24 have accumulated, is looking at the percentages that
25 specific institutions have and how they - if 90

1 percent or more of their collections have been
2 deemed culturally unidentifiable that's at least
3 somewhere to start, 90 percent is a pretty high
4 number. And then you do start seeing patterns where
5 this is occurring.

6 SHERRY HUTT: So you want to correlate
7 affiliated versus unidentifiable by institution?

8 SONYA ATALAY: Yes.

9 SHERRY HUTT: For the record, I'll take that as
10 a yes.

11 SONYA ATALAY: Yes, and another point that I
12 appreciated that I learned and heard comments on
13 yesterday, actually again from you, Ms. Hutt, and
14 from the others, I believe, Carla and Stephen were
15 also giving comment to this in the question and
16 answer period in the training yesterday, which was
17 related to - there were some interesting questions
18 on culturally unidentifiable inventories then. And
19 something I found encouraging that I'd like to think
20 - maybe ask the committee to think more about, is
21 this issue of not bringing disputes but some other
22 process. We were discussing this and I wonder if
23 you could refresh my memory as to what we were
24 talking about with that. But I think tribes that
25 are experiencing these frustrations may be kind of

1 in a stalemate because they don't want to bring a
2 dispute. But if there was some other way to go
3 about this that wasn't as contentious that might be
4 able to - we could think further about and might be
5 able to help these communities move forward and that
6 might be a way to go.

7 SHERRY HUTT: That discussion was under Section
8 8, which is the Review Committee section, (c)(4) is
9 the dispute process - is the - lists that the Review
10 Committee can resolve disputes. But under (c)(3),
11 which is not used as much but could be, the Review
12 Committee is presented with discreet questions and
13 so someone might bring just that question to the
14 Review Committee that might be a - might be the -
15 open a channel to better consultation and move
16 things forward.

17 STEPHEN SIMPSON: And that process is for the
18 committee to make findings of fact. It's not legal
19 questions because that's not what you do but it is
20 to make - to help a process along and make findings
21 of fact. And unlike a dispute where it is brought
22 by - it has to be brought by both parties to the
23 committee a request under (c)(3) can be brought by
24 just one, for instance a tribe that is concerned
25 about this sort of issue.

1 COLIN KIPPEN: I wanted to make a comment and I
2 think that the questions that have been raised and
3 the comments that have been made by all three of the
4 scientist members of our community - of our Review
5 Committee and I think were really right on, it does
6 appear to me that without this data we would never
7 really understand that there is - that there are
8 CUIs that are ready to become affiliated and
9 identified, and I think that was really - I think it
10 was about a year and a half ago that we received
11 that information and I thought it was really
12 compelling when your student presented that to us.
13 I also think that the committee members were right
14 that we haven't figured out a way to cause action to
15 happen around it. I can just tell you there are
16 several ways that that happens, one is a more-
17 detailed report. Another is a hearing in a meeting
18 to discuss that, to invite people to come forward to
19 talk with us about why is it that they're in that
20 situation where they have that percentage of remains
21 that could be affiliated but yet presently are
22 identified as culturally unidentifiable. To me that
23 - I think those kinds of steps are the steps that
24 most governmental agencies use to create action and
25 to create movement. So I'm not sure how we would

1 notice that. Our next meeting is in Florida, and I
2 think the tail of some of what we were doing touched
3 Florida. I recall it being the Tennessee Valley, as
4 you described, and I recall much - there was a lot
5 in Ohio, I recall.

6 SHERRY HUTT: Right.

7 COLIN KIPPEN: But I think that it might be
8 worthwhile to see about inviting - if we had a list
9 of who those - of those individuals or museums or
10 institutions or tribal entities, we might do well to
11 invite them to our next meeting and to have in the
12 conversation where we have public comment to just
13 have them come forward and talk with us about what
14 their plan is.

15 SHERRY HUTT: If we - and I don't know how I'm
16 going to accomplish this. I do appreciate the
17 homework assignments and I figure out how do we get
18 them done, but if we could produce such a report
19 sufficiently in advance of the next meeting and send
20 it to the folks who are indicated in the report,
21 obviously in the spirit of openness so that they
22 would know this is what we were going to present and
23 invite them to come if they would like to do so.

24 DAN MONROE: I would like also to see - do you
25 have access to information about estimated annual

1 operating budgets for individual institutions?

2 SHERRY HUTT: No, we -

3 DAN MONROE: Is there any way -

4 STEPHEN SIMPSON: We don't within the program, I
5 don't think, although it might be available from
6 annual reports.

7 SHERRY HUTT: We can, in compiling a report,
8 look at whether it's a state agency, local, small
9 museum, big museum, big collection.

10 DAN MONROE: I guess what I'm suggesting is I'd
11 be most interested initially in looking at
12 institutions of some reasonable size with respect to
13 this issue, and maybe one way to do that is just to
14 look at the total number of human remains in their
15 possession. That's probably - that would probably
16 be adequate actually. So it would be valuable to
17 have that kind of data, how many human remains
18 total, how many were CUI. Another way of actually
19 parsing what we've suggested I think, which is
20 indirectly a way I think to look at the size of the
21 institution involved. It's one thing, I think, to
22 look at very, very small institutions that may
23 really have some difficulties trying to responsibly
24 do cultural identification, as opposed to larger
25 institutions, particularly it concerns me that many

1 of these remains were acquired through excavation,
2 which implies a larger institution than a small one,
3 in most cases. So if we could address that,
4 whatever way it seems to make most sense, rather
5 than trying to solve it here, but you understand the
6 thrust of - direction of -

7 SHERRY HUTT: Yes, I do.

8 STEPHEN SIMPSON: And on the - sort of a - we
9 were discussing the different ways the committee has
10 to hear something like this. The findings of fact
11 procedure that Sherry mentioned in Section (c)(3)
12 would need to be called by a tribe, museum or
13 Federal agency. However - and that doesn't sound
14 like what you're talking about. But there is -
15 Section (c)(6) allows the - or requires that the
16 committee can consult with Indian tribes and Native
17 Hawaiian organizations and museums on matters within
18 the scope of the work of the committee, and CUIs are
19 clearly within your scope, affecting such tribes or
20 organizations. That's why we're positive that what
21 you're thinking about here is a consultation with
22 tribes and maybe NHOs and museums.

23 COLIN KIPPEN: My sense is that that is what is
24 being contemplated, and my sense is that what we
25 could even do is we could convene a panel. We could

1 get the names of the institutions or the tribes
2 involved. We could ask them to come forward. We
3 could have that agenda for half an hour or 45
4 minutes and have a conversation about the fact that
5 the committee is deeply concerned about the high
6 percentage of CUIs present with a set of facts that
7 would indicate that they're not all CUIs and that
8 with some commitment and work that we might be able
9 to substantially reduce that number and then have
10 that - just have a consultation, a conversation
11 about what can we do to help.

12 I think it would also play into the grants
13 process because that would be really fertile ground
14 for our grants person to understand who some of the
15 potential players might be that she could contact to
16 really get this going. And if you had them all at a
17 table, you could literally begin to move that bridge
18 building forward because I'm reading, I think,
19 between the lines. But what Dan Monroe was
20 suggesting is that he wanted - he had some sense
21 that perhaps financial resources may be a factor one
22 way or the other, a factor if you didn't have it -
23 that if you had it you'd be able to do something,
24 but that if you did have those resources you may be
25 not using them as well as you could to identify this

1 large number of culturally unidentified human
2 beings. So I'm thinking that that's a - from either
3 perspective whether it's you have the money and
4 you're not using it or you don't have the money but
5 you'd like to be able to do more if you had the
6 resources. I think both of those things we could
7 assist with.

8 So I'm not sure how we would do this but a list
9 and maybe invitations and as we think about our next
10 meeting to have perhaps, since we're going to be at
11 least at the tail end of this group of states that
12 are - were implicated in this study, I think that
13 might be a nice place to begin the conversation.

14 DAN MONROE: Mr. Chair, since I'm sure there's
15 quite a number of - how many institutions fell into
16 that central corridor band, ballpark?

17 SHERRY HUTT: So you're talking 60,000 -
18 approximately 60,000 human remains. Some
19 institutions had as many as ten, some had just a few
20 hundred or a few dozen. So I don't recall how many
21 institutions individually. But I see where you're
22 going. You're looking at correlating are they big
23 collections in small institutions that lack capacity
24 and staff or is there a correlation between big
25 collection, big institution, small - you know,

1 you're looking at where the issues or difficulties
2 might lie.

3 DAN MONROE: Yeah, to be very straightforward, I
4 think it would be most valuable since this could
5 include quite a number of institutions and we can't
6 consult with all of them reasonably, to identify
7 those institutions that are larger institutions that
8 have a comparatively large number of remains and
9 also a comparatively high number of CUI. So let's
10 say you suggested 90. I'd say anything over 80
11 percent would, you know - those would be the
12 criteria. It's 80 percent CUI, comparatively large
13 institution, comparatively large number of CUI and
14 human remains in their possession. Those would be
15 the institutions I'd be interested in and I'd
16 suggest that we invite to consult with us. I think
17 that that process itself will attract some attention
18 and perhaps encourage others ultimately to take a
19 look at where they stand as well, but that seems to
20 me to be the most productive way to start.

21 SHERRY HUTT: Good.

22 SONYA ATALAY: I have a question related to
23 this, kind of following up on what you were saying
24 also, Mr. Monroe, which is when the CUI database was
25 compiled in the way that inventory - when people

1 file an inventory they need to state very clearly
2 who - which tribes they've consulted with. Is that
3 the case also with the CUI database, that people
4 needed - institutions and agencies needed to very
5 clearly state who they consulted with? Obviously
6 what I'm getting at is to try to understand if there
7 was consultation to determine that these were CUIs
8 or not -

9 SHERRY HUTT: The inventory format does not get
10 into that. A notice does. The notice form is where
11 we - you indicate tribes three times, who you
12 consulted with, who you've made a determination, who
13 can make a request. On the inventories, it's a list
14 that describes the site location and what you have
15 from there and it's a thumbnail from that. It's
16 more site specific. It's almost like taking the
17 registrar's record and adding cultural affiliation
18 determination. And without a cultural affiliation
19 determination it's not an inventory. Now, without a
20 consultation it's not a NAGPRA inventory. Very
21 clearly, NAGPRA inventories are to be the result of
22 consultation. We know that's what the law requires.
23 We know anecdotally that in the push to comply in
24 1995 that many institutions submitted their lists
25 based on what they may have had and may or may not

1 have gone back and picked up - and there's a lot of
2 responsible museums and Federal agencies with big
3 collections that have gone back and said, okay,
4 let's deal with this site or this culture and
5 consult with those tribes and then sort of carve out
6 bits of the collection and resolve them, you know,
7 bit by bit.

8 And so you'll see a lot of notices from the
9 same institutions. You'll see some that are very,
10 very active and then some that are not active at
11 all. And I see what you're looking at is where are
12 the large collections where there's been - that are
13 conspicuous by lack of activity in having a great
14 number of CUI relative to the number of human
15 remains per the size of the collection. So these
16 are your sort of parameters of your equation, if you
17 will. And I think we can design something. I'll
18 need to figure out how we get that done in six
19 months, but we will - I hear what you're saying and
20 let's see what we can come up with and get to you
21 for the next meeting. I appreciate the input.

22 DAN MONROE: I don't think we actually have to
23 be necessarily comprehensive. I think we can only
24 consult with a very small number of institutions
25 actually, at least that seems to me to be

1 reasonable. To sit down and have this conversation
2 with institutions is going to take some time, and so
3 it's more a matter of beginning the process and
4 doing so with, let's say, two or three institutions
5 that fit those criteria.

6 COLIN KIPPEN: I actually think this is - you
7 know, there's always this process of how you create
8 change and you always create change in really small
9 ways. It's not unlike what happened when we as a
10 committee said that we were going to really go after
11 compliance, NAGPRA compliance. It - the mere fact
12 that someone was checking to see if museums were
13 moving the - were doing what they were supposed to
14 do and Federal agencies were doing what they were
15 supposed to do created a whole set of activity, and
16 I think that this is what we're aiming at so that
17 whoever we - comes before us, if they could be
18 representative of groups. The mere fact that we're
19 having this conversation will send ripples
20 throughout the community and will say that we are
21 committed, especially if we can not only do this in
22 a way that could be perceived as, you know, negative
23 but actually could be very positive in the sense
24 that we're bringing - we're trying to figure out how
25 to better match resources at National NAGPRA grants

1 program and other kinds of consultative, helpful
2 services to these entities, to these museums or
3 Federal agencies, state agencies, or even tribes who
4 may not have a way to actually begin.

5 And so I think - you know, we've done this
6 before. I think this is how you make change happen.
7 I think it's a really positive step. So I would
8 just say to you, Sherry, we're not asking for
9 perfection. We're simply just asking for the
10 ability to convene a group before us with some basic
11 data that help us to understand who they are and who
12 they represent and sort of to define a set of
13 discussion points.

14 SHERRY HUTT: A sample, but based on valid data.

15 COLIN KIPPEN: Based on whatever valid data you
16 have, and I wouldn't go back and try to reinvent the
17 wheel. I would use the great data that you already
18 have, you know, and try to break that down. I think
19 two or three people or maybe even three or four
20 people would be - would probably be a good start for
21 this work, and so I really commend that idea. I
22 think this could get - this could lead us somewhere.

23 I just have a question. It was a question
24 having to do with your report. I wanted to know
25 what the result was of our '07 report to Congress.

1 Has that gone up to the Hill? Have they received
2 our '07 report to Congress?

3 SHERRY HUTT: Yes. Yes.

4 COLIN KIPPEN: They have?

5 SHERRY HUTT: Oh yes.

6 COLIN KIPPEN: Okay. And do we ever get a
7 response from them?

8 SHERRY HUTT: Well, I am told -

9 DAN MONROE: A stamp that says received.

10 SHERRY HUTT: Actually, we have sometimes hand-
11 delivered those to make certain that they go where -
12 you know, put them in boxes. And some of the - and
13 I will say too, just to give you a little thumbnail
14 of the relationship with House and Senate, the
15 Senate Indian Affairs Committee remains very
16 interested in NAGPRA and - how long ago was it that
17 we did that briefing? It wasn't that long ago. The
18 - Senator Inouye's staff and Senator Akaka's staff
19 called and said can you come up and give us a
20 briefing, what's doing recently. And some of our
21 staff are new and they'd like a little NAGPRA one-
22 on-one. And we contacted, as we are good Department
23 of Interior employees, the Legislative Affairs
24 people and they sent David and I up there by
25 ourselves. And we had just a great afternoon with

1 the Senate staff, and they were just delighted with
2 the work of the committee and concerned about how
3 things are progressing in communities because they
4 feel very committed to the work that is to be done
5 and completed under the law. But it was - the
6 dialogue was wonderful and we were delighted to have
7 that opportunity.

8 On the House side, we've not had that kind of
9 direct contact, but Ray Hall, who chairs Natural
10 Resources, scheduled a hearing on NAGPRA for - it
11 was to be a few weeks ago and it was canceled and
12 reset for sometime the first part of July. And I
13 had the opportunity to prepare Senate testimony - or
14 House testimony to be given. I don't know who will
15 be initially testifying on behalf of the Department
16 or the Park Service. I don't know who the witness
17 will be or when that hearing will be scheduled, but
18 again it's a wonderful opportunity to talk about
19 NAGPRA and what's going on. So the attention, I
20 think, is wonderful.

21 COLIN KIPPEN: Now, it's my understanding that
22 there has been a GAO report commissioned, is that
23 correct, on the Federal agency compliance and is
24 that something we're going to hear about or not?

25 SHERRY HUTT: Do you want to speak to that? We

1 have with us a celebrity guest.

2 COLIN KIPPEN: Is this an appropriate time to
3 have this conversation? I just - again, I -

4 SHERRY HUTT: No, this is fine.

5 COLIN KIPPEN: Okay. Thank you.

6 **INTRODUCTION OF JEANETTE SOARES, GOVERNMENT**

7 **ACCOUNTABILITY OFFICE**

8 JEANETTE SOARES: Hi, my name is Jeanette
9 Soares. I'm a staff attorney at the Government
10 Accountability Office, probably not authorized to
11 speak at this meeting. I can confirm that we have
12 received a request from the Senate Indian Affairs
13 Committee to review NAGPRA's implementation. I have
14 been staffed to that review. We - GAO as an
15 institution has been very busy with Recovery and
16 Stimulus Act work and so more people will be staffed
17 to this job but I'm not sure when, sometime in the
18 near future, in the next couple of months, then we
19 will be starting in earnest and will obviously be in
20 contact probably with all of you and with the
21 national office and with Bob and working with Senate
22 Indian Affairs to outline the scope of the job and
23 what exactly they want us to investigate.

24 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

25 COLIN KIPPEN: By way of background for the

1 committee members who maybe weren't part of that
2 process and also for the people in the audience, the
3 committee has at least over the last three years,
4 maybe four years, has been asking for more data and
5 information about NAGPRA compliance, particularly
6 with respect to Federal agencies. And there has
7 been some preliminary information collected - there
8 was a grant to the Makah Tribe which developed some
9 of that information but there has been this ongoing
10 request for information about Federal agency
11 compliance with NAGPRA. And that is the basis upon
12 which I believe the Senate Committee on Indian
13 Affairs has made the request because our annual
14 reports to Congress over at least the last three
15 years have requested that there be a Government
16 Accountability Office review of Federal agency
17 compliance with NAGPRA.

18 And our concern is that it is the equivalent of
19 an unfunded mandate for Federal agencies. It's the
20 law but it does take capacity to be able to develop
21 the work that needs to happen to comply with NAGPRA.
22 And we're concerned because we hear - and again, we
23 didn't have overarching data but we hear anecdotal
24 reports that the compliance process is very uneven
25 in different agencies. So we really look forward to

1 that report. My assumption is we don't have a role
2 to play in terms of scoping that report out, that
3 that is something between you and the requesters in
4 the Senate or in the House or both. And that is
5 what - it sounds like that's the process you're
6 going through now.

7 JEANETTE SOARES: Yes, Mr. Chairman. That is
8 the process. We have not begun it yet because the
9 job has not been fully staffed, but once it's
10 staffed we will be talking with Senate Indian
11 Affairs. I was not party to any conversations that
12 the people at GAO have had with the Senate Indian
13 Affairs Committee but it is my understanding of
14 those conversations that the prior report was what
15 prompted the request for us to investigate.

16 COLIN KIPPEN: I would like to really encourage
17 you to share the message with your fellow GAO
18 auditors and attorneys that this is something we are
19 very concerned about because without data how is it
20 that we're to make things better? How is it we're
21 to understand what needs to be addressed in future
22 legislation or in amendments or even in issues of
23 how to fund and better make these things - better
24 accomplish the work of NAGPRA? So that was the
25 spirit in which we made these recommendations. It

1 is the spirit in which we really look forward to
2 receiving your recommendations and your findings.

3 JEANETTE SOARES: Well, we're always happy to
4 provide data. We love doing that, and we look
5 forward to working with all of you in the National
6 NAGPRA Office. You all were very kind to allow me
7 to attend this. I was also at the training
8 yesterday. So I look forward to working with all of
9 you.

10 COLIN KIPPEN: Thank you.

11 ERIC HEMENWAY: Thank you.

12 DAN MONROE: Great.

13 SHERRY HUTT: You've answered your question as
14 whether people read your reports.

15 COLIN KIPPEN: I guess.

16 DAN MONROE: Yes.

17 COLIN KIPPEN: Thank you. Are there any other
18 comments and questions - or questions? All right.

19 Mr. Tarler.

20 **NATIONAL NAGPRA PROGRAM LAW ENFORCEMENT**

21 **INVESTIGATOR'S REPORT ON NAGPRA CIVIL ENFORCEMENT**

22 **PRESENTATION - BOB PALMER**

23 BOB PALMER: Good afternoon, Mr. Chairman,
24 members of the public and Review Committee members.
25 For the record, my name is Bob Palmer, and I'm the

1 NAGPRA Civil Penalties Investigator with the
2 Department of Interior. Before I begin, I would
3 like to take this opportunity to welcome the two
4 newest members to the Review Committee. I wish you
5 success and clarity of thought as you contemplate,
6 deliberate and strive to provide direction and
7 insight to those who seek your guidance.

8 As the civil penalties investigator, I would
9 like to point out for the record and for members of
10 the audience that I am not employed by the National
11 NAGPRA Program, nor is any of my salary paid out of
12 the National NAGPRA Program funding. Instead, the
13 component of my time, and hence my salary, that is
14 dedicated to NAGPRA civil penalty investigations
15 comes from the operations budget of the Law
16 Enforcement, Security, and Emergency Services
17 division of the National Park Service, and is a
18 result of a partnership that exists between the
19 National NAGPRA Program, the National Park Service's
20 Law Enforcement, Security, and Emergency Services
21 office in Washington, DC, and my primary employer,
22 Effigy Mounds National Monument located in Northeast
23 Iowa.

24 To this end, I would like to recognize these
25 three parties. Without the willingness of the

1 National NAGPRA Program to be flexible in what times
2 an investigator is available, without the
3 willingness of the Law Enforcement, Security and
4 Emergency Services branch to pay the bill, and
5 without the willingness of my line supervisor,
6 Superintendent Phyllis Ewing of Effigy Mounds
7 National Monument, to permit me to do this outside-
8 of-the-park work, I would not have the opportunity
9 to carry out this important task.

10 In my brief time before you, I would like to
11 address my activities undertaken for the program to
12 date in this financial year. Specifically, I would
13 like to very briefly discuss in a general sense
14 current civil penalty investigations, the DOI-FBI
15 "homework" assignment that I was tasked with at the
16 meeting at San Diego in October 2008, and the NAGPRA
17 civil penalty film project, which I understand the
18 file will be shown at the conclusion of today's
19 meeting.

20 Concerning civil penalties, as the Chair and
21 the committee would be aware, the civil penalties
22 rule, which can be found at 43 C.F.R. 10.12 was
23 published as an interim rule in 1997 and as a final
24 rule in 2003. In May 2005, through a Secretarial
25 Order, the Secretary of the Interior gave the

1 National NAGPRA Program the responsibility of
2 providing staff support to the Secretary's designee
3 on civil penalties, the Assistant Secretary for Fish
4 and Wildlife and Parks. Since the beginning of
5 2006, I have been assigned on a part-time basis of
6 eight hours per week to carry out investigations
7 under the Act.

8 As the committee will recall, the NAGPRA
9 regulations set forth eight ways that a museum might
10 fail to comply with the Act or its regulations, and
11 they are: one, sale or transfer of NAGPRA items
12 contrary to the Act; two, failure to complete a
13 summary; three, failure to complete an inventory;
14 four, failure to notify tribes within six months
15 after completion of the inventory; five, refusal to
16 repatriate; six, repatriation prior to publishing a
17 notice in the Federal Register; seven, failure to
18 consult with tribes and/or lineal descendants; and
19 finally eight, failure to inform recipients that
20 items have been treated with pesticides.

21 At present, I am investigating a number of
22 allegations that involve multiple institutions from
23 around the country. Based on my current progress
24 projections, I anticipate concluding many of these
25 investigations over the next few months, and by the

1 end of the Government's financial year on September
2 30, I project that findings on approximately 20
3 individual counts will be submitted to the Assistant
4 Secretary for consideration. As I did at our last
5 end-of-year meeting, I intend at the next meeting to
6 provide you with a full summation of where we stand
7 regarding new allegations received in the current
8 fiscal year, matters disposed of, and the trends and
9 nature of civil penalty investigations.

10 My final comment on this matter is that I would
11 like to note for the record that we recently
12 received payment in full for one concluded penalty
13 assessment. And earlier this week an attorney for a
14 museum that has received their penalty assessment
15 informed me that, while the check is not yet in the
16 mail, the museum is not planning to contest the
17 penalty assessment and intends to pay the
18 assessment.

19 The next point I would like to briefly discuss
20 is the matter of the homework assignment that I was
21 gifted with at the last meeting. Again, for the
22 benefit of the new committee members and the public,
23 the National NAGPRA committee requested that I
24 investigate the possibility of establishing a
25 Memorandum of Agreement between the Department of

1 Interior and the Federal Bureau of Investigation
2 which would permit Department of Interior law
3 enforcement officers to investigate potential
4 criminal violations of NAGPRA and the Archaeological
5 Resources Protection Act of 1990 - 1979, pardon me,
6 that occur outside of Department of Interior and
7 Indian lands. To this end, I have met and held
8 discussions with the head of the FBI's Indian
9 Country unit in Washington, DC, and learned that the
10 FBI may possibly be interested in such an agreement.
11 I have drafted an agreement which is currently with
12 our legal counsel for input and consideration.

13 Lastly, I would like to make a few remarks
14 regarding the NAGPRA civil penalty video project.
15 It is my hope that this product will serve as a very
16 timely piece of advocacy for NAGPRA compliance.
17 What I mean by stating, quote, "a timely piece of
18 advocacy for NAGPRA compliance" is this: I have now
19 been investigating NAGPRA civil penalty allegations
20 for about four years, and I have observed and been
21 involved in investigating quite a number of
22 situations that, shall I say, I believe could be
23 quite instructive to a wider audience of parties
24 interested in NAGPRA. In developing this video
25 product, I have drawn upon those "instructive

1 moments" in a way that I hope will provide both
2 tribes and museums with useful information, and
3 additionally, as you will see, and to paraphrase
4 what they used to say in the police shows of old,
5 the names of the parties have been changed to
6 protect both the innocent, and in some cases, the
7 not-so-innocent.

8 Finally, I would just like to comment on the
9 production of this section of NAGPRA - The Video.
10 This section was filmed by Loras College
11 Productions, which is based at Loras College in
12 Dubuque, Iowa. When I described to Craig Schaefer,
13 the program director at Loras, what NAGPRA was, the
14 role of civil penalties, and the purpose of the
15 film, he felt very strongly about the value and
16 utility of such a training film, and agreed to
17 produce it at a very, very substantially discounted
18 cost to the program. Not only was the production
19 cost significantly discounted, but all of the actors
20 volunteered their time and the locations where
21 filming took place did not charge a filming fee. I
22 feel a deep sense of gratitude to the good will of
23 all who were involved in this project, in particular
24 Craig Schaefer, Ted Rosean and Chris Lenart from
25 Loras College Productions, the Behavioral Sciences

1 Division at Loras College, and the volunteer staff
2 at the Froelich Foundation in Froelich, Iowa.

3 Again, I would like to thank you for the
4 opportunity to speak to you today, and I would be
5 happy to field any questions that you may have.

6 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

7 COLIN KIPPEN: Thank you. I guess the first
8 question I would have for you is the DOI/FBI
9 Memorandum of Agreement. That was patterned after
10 another agreement that the FBI has regarding - was
11 it Crafts, Arts and Crafts?

12 BOB PALMER: That's correct. The FBI currently
13 has an agreement in place with the Department of
14 Interior that is in reference to the Indian Arts and
15 Crafts Board Act, and under that agreement, it
16 permits criminal investigators within the Department
17 of Interior to carry out investigations outside of
18 Indian Country and also off Federal lands in
19 conjunction with the FBI, basically as a way of
20 supporting the FBI in carrying out this objective.

21 COLIN KIPPEN: And I don't know if it was clear
22 in your presentation. I think I want to make it
23 clear for the audience and for the new staff, new
24 NAGPRA members, the reason that we brought this
25 issue up is because of the fact that the FBI

1 investigates - their Art Division, which we fall
2 within, investigates very, very major crimes of
3 having to do with art theft, and that we were
4 concerned that a lot of our cases which would
5 require enforcement really wouldn't be given
6 priority by the agents. And so we were looking to
7 have someone with some special expertise being
8 cross-designated so that what we consider serious
9 would be able to be moved forward because the sense
10 was that it is a triage system at the FBI with only
11 the most important art cases moving forward and that
12 we may not be given the attention that we deserve.
13 So that was the basis upon which we asked you to
14 look into this Memorandum of Agreement. Do you have
15 any idea how far along in the process we are and
16 whether or not that will be something that will come
17 to fruition in the near future?

18 BOB PALMER: Well, just a point of
19 clarification, since the last meeting it's my
20 understanding that NAGPRA, criminal NAGPRA in the
21 FBI has been moved from the Art Crimes section to
22 the Indian Country unit.

23 COLIN KIPPEN: Oh, that's a positive
24 development.

25 BOB PALMER: So it's - and as I mentioned in my

1 discussions with the head of the Indian Country unit
2 there is certainly an interest in that. However, it
3 will come back to in some - I would suggest it will
4 come back to in some extent funding in that an
5 agreement can be put in place to do this but as
6 we've been speaking with regards to unfunded
7 mandates that's the - I'm not in a position to speak
8 on behalf of Law Enforcement and Emergency Services
9 for the National Park Service with regards to this,
10 but I am certainly working on having this draft
11 completed and I think we will have some additional
12 information to provide at the next meeting.

13 COLIN KIPPEN: I would just suggest to the
14 speaker before you, who is from the Government
15 Accountability Office, that the FBI is a Federal
16 agency and we are interested in assuring that the
17 provisions of law that apply to this Act are
18 enforced. So that may be another factor of Federal
19 agency compliance, i.e. whether or not the Federal
20 Bureau of Investigation is able to give necessary
21 attention to our issues. So thank you for that. I
22 have no further questions presently.

23 DAN MONROE: Thank you for your report. Great
24 work.

25 BOB PALMER: Thank you.

1 COLIN KIPPEN: Do we have any other questions,
2 comments?

3 I wanted to know if we could have a very short
4 break before we continue on, and I wanted to speak
5 with you for just a couple of minutes.

6 DAVID TARLER: You read my mind.

7 COLIN KIPPEN: Okay. Could we just take a five-
8 minute break? Thank you.

9 **BREAK**

10 COLIN KIPPEN: I'd like to call the NAGPRA
11 Review Committee back to order. We have the Review
12 Committee assembled.

13 Mr. Tarler, the next order of business, please.

14 DAVID TARLER: The next order of business will
15 be the dates and location of the spring 2010 Review
16 Committee meeting, and if the committee would like
17 the dates and location of the fall 2010 Review
18 Committee meeting.

19 **DATES AND LOCATION OF THE SPRING 2010 REVIEW**

20 **COMMITTEE MEETING**

21 DAN MONROE: Mr. Chairman.

22 COLIN KIPPEN: Mr. Monroe.

23 DAN MONROE: I would like to put a proposal on
24 the table that we meet in DC in the spring and that
25 we, I understand, have an invitation from the

1 Haudenosaunee -

2 SHERRY HUTT: We do.

3 DAN MONROE: - to meet - which would entail
4 meeting in Syracuse and I propose that we accept
5 that invitation for the fall 2010.

6 COLIN KIPPEN: We have a - we have a proposal
7 for spring and fall meetings. Do we have any other
8 ideas? Any other meetings? In the past what we've
9 done is we've gone through to try to understand
10 where we've been recently. We're going to be on the
11 East Coast for our next meeting and then we have the
12 May meeting in the spring and the October meeting in
13 the fall of 2010.

14 DAN MONROE: So my - Mr. Chairman, my
15 understanding is that we met in Albany in 1995, that
16 we had a meeting in Cambridge - I'm not sure what
17 the date is -

18 DAVID TARLER: 2001.

19 DAN MONROE: - 2001.

20 SHERRY HUTT: Tab 11.

21 DAN MONROE: Okay, great. And the Haudenosaunee
22 would - if we met and accepted that invitation would
23 enable a number of tribes to attend. The DC meeting
24 enables us to update a number of folks in DC
25 regarding the program, which I think would be

1 advantageous, and that's the logic behind the
2 proposal.

3 COLIN KIPPEN: Are there any other comments?

4 I have one comment. Actually I like the two
5 venues, Syracuse, New York and Washington, DC. I
6 too agree that Washington, DC is a good place to
7 have a meeting, but here's what I have been thinking
8 and my sense is maybe we might - I would like the
9 committee to consider having the meeting in DC -
10 having that in October, and the reason I'm asking
11 for October in DC is that it's my hope that the GAO
12 report will have been completed and if that report
13 were to be completed, we would have that in play
14 when we went to Washington, DC to meet.

15 And again, I don't have strong objections to
16 what Dan has suggested. My sense is that if you
17 have that report in play when you go to the Hill or
18 when we have that meeting, it will generate a
19 substantial amount of conversation about how to fix
20 the problem and I like being in Washington, DC, with
21 a report that enables us to really look at how to
22 make NAGPRA work better. So that's the only
23 consideration I would offer.

24 Knowing what I know about how GAO reports are
25 done, I don't think it will be ready for public

1 comment in May. It possibly could but it is not
2 going to be in play yet, whereas if we were to go in
3 October, I would imagine that that would have been
4 vetted and we would literally be able to have a
5 meeting with a lot of people now aware of some of
6 the factual issues having to do with Federal agency
7 compliance from the FBI to all of the various
8 agencies that are involved in ground disturbing
9 activities. So that's my only - that's my only
10 caveat. Either one is good for me, I would just say
11 to the committee however you want to do this is
12 fine. Can we - is there a preference for having the
13 spring meeting in Syracuse and the fall meeting in
14 2010 in Washington, DC?

15 DAN MONROE: I guess the only - the only
16 response would be that sooner might be better than
17 later in terms of having the DC meeting with or
18 without the GAO report and I have no idea what the
19 schedule is for getting these sorts of things done.
20 I would be very surprised if it were - if it were
21 done that quickly but I could be wrong.

22 COLIN KIPPEN: I don't think it will be done by
23 May, from my experience with -

24 DAN MONROE: No, I was more referring to
25 October.

1 COLIN KIPPEN: Oh October. I've seen them done
2 in that time frame.

3 DAN MONROE: I'd be surprised it was done in
4 October, that's what I was -

5 COLIN KIPPEN: I don't have strong feelings
6 either way and I share your thoughts about wanting
7 to be able to address the Hill and the agencies and
8 all the people in DC.

9 DAN MONROE: Yeah, so I don't have really strong
10 feelings one way or the other either but that would
11 be the motivation. Is there any comment that you
12 have, Sherry?

13 SHERRY HUTT: They're definitely interested now,
14 so I wouldn't want the interest to wane, so sooner
15 would be good.

16 COLIN KIPPEN: Okay. All right. Any comments?

17 So we set the meeting, having the meeting in
18 May in DC and then the October meeting, we have that
19 in Syracuse. Now what's different than we've done
20 before is previously we have tried to identify the
21 day. We're not going to do that now. We're going
22 to enable you, the staff, to pick the days. I would
23 say that what is probably a better idea is to have
24 this during the workweek, and I would try to stay
25 away from long weekends like this weekend because I

1 think it is difficult for a lot of people to attend
2 over a long weekend like this. But I know we
3 directed you when we selected this date that you
4 would have it this day. So we would like to have it
5 during the workweek so that we can get the agency
6 people and any other folks who are working to come
7 to this event, so Thursday and a Friday, or maybe
8 even a one-day overlap to a weekend day is also a
9 possibility, but I'll leave that to your discretion.
10 We're looking for a May and October 2010. Is that
11 agreeable to the committee?

12 DAN MONROE: And it would be great if we could
13 arrange, which would require I guess some
14 contributions from individual institutions, to do a
15 reception at the DC meeting.

16 SHERRY HUTT: When we've had successful
17 receptions, usually the Review Committee reached out
18 and contacted in your ombudsman, statesman capacity
19 and then we followed up from there. If there were
20 interested folk, we would be willing to do that.
21 That would be great. We would be happy to follow up
22 and do the details.

23 DAN MONROE: My museum will be willing to help
24 support that. Maybe we can get some others as well.

25 STEPHEN SIMPSON: I would note in that context

1 that NCAI just established an embassy of tribal
2 nations in Washington.

3 DAN MONROE: An embassy?

4 STEPHEN SIMPSON: Yes, so someone to talk to.

5 COLIN KIPPEN: All right. So we've selected the
6 date. Mr. Tarler?

7 DAVID TARLER: Thank you very much,
8 Mr. Chairman. I recommend at this time that we
9 adjourn and that we reconvene tomorrow at 8:30 a.m.,
10 at which time we will hear a presentation by the
11 Park NAGPRA Program to be followed by public
12 comment.

13 COLIN KIPPEN: So we would adjourn now, and the
14 video would then follow after we adjourn?

15 DAVID TARLER: Exactly.

16 COLIN KIPPEN: Okay. Before we leave, I'd just
17 like to ask Mr. Hemenway to give us a blessing as we
18 leave and as we conclude our activities for the day.

19 ERIC HEMENWAY: Sure.

20 **CLOSING BLESSING**

21 ERIC HEMENWAY: (Native American language.) My
22 name is (Native American language). I'm from the
23 Place of the Prayer Sticks, aka Cross Village, and I
24 am Anishnaabe. That's my distinction as an
25 individual, and I just thanked the spirits for

1 allowing us to be here, allowing us to work here,
2 and allowing for - giving permission to work with
3 what we call the (Native American language), the
4 Ones Who Have Walked on Before Us. And there's a
5 lot of names for those - CUI, inventories,
6 collections - but we always remind ourselves that
7 these are people who had been here before us. It's
8 our duty to try to treat them as people and return
9 them back to the (Native American language), which
10 we believe is Mother Earth. Thanks.

11 COLIN KIPPEN: The meeting is now adjourned.

12 Thank you.

13 **MEETING RECESS**